

**LABOUR
RELATIONS
BOARD
OF B.C.**

ANNUAL REPORT 1982

A N N U A L R E P O R T

of the

LABOUR RELATIONS BOARD OF BRITISH COLUMBIA

FOR THE YEAR

1 9 8 2



LABOUR RELATIONS BOARD OF B.C.

1275 WEST 6TH AVENUE, VANCOUVER, B.C. V6H 1A6 / 736-2421

LETTER OF TRANSMITTAL

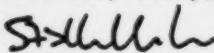
February 28, 1983

The Honourable Robert H. McClelland
Minister of Labour
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Sir:

As provided in Section 151 of the Labour Code,
I have the honour to submit herewith the ninth
Annual Report for the Labour Relations Board of
British Columbia for the year ended December 31, 1982.

Yours very truly,



Stephen Kelleher
Chairman



LABOUR RELATIONS BOARD OF BRITISH COLUMBIA

MEMBERS

(as of December, 1982)

Stephen F.D. Kelleher	Chairman
Ronald F. Bone	Vice-Chairman and Registrar
Angus Macdonald	Vice-Chairman
Gabriel M. Somjen	Vice-Chairman
Kenneth E. Albertini	Vice-Chairman
Brian Foley	Vice-Chairman
Allan E. Black	Vice-Chairman
Peter Sheen	Vice-Chairman
J. Dale Michaels	Vice-Chairman
Clarence J. Alcott	Jack Gerow
Daniel Bell	Doris Hanson
John Macdonald Billings	James McAvoy
John Brown	Jack A. Moore
Wayne Carkner	Nora Paton
Herbert Lowell Fritz	Douglas Quinn
Irving Froese	Anthony D. Saunders
John Fryer	H. Henry Volkmann

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I. INTRODUCTION

Under the Labour Code, R.S.B.C. 1979, c.212, the Labour Relations Board is directed to report annually to the Minister on its activities. Section 151 states:

151. (1) The board may report to the minister, and shall report to him on his request and the minister may authorize the board to publish its report.

(2) The board shall, on or before March 1 each year, make a report to the minister for the preceding calendar year, setting out briefly

- (a) all applications to the board under this Act and summaries of the findings of the board on them;
- (b) other matters the board considers to be of public interest in the discharge of its duties under this Act; and
- (c) other information the minister directs.

(3) The report referred to in subsection (2) shall be laid before the Legislature if it is then in session; otherwise the report shall be laid before the Legislature within 15 days after the opening of the next ensuing session.

This requirement for a separate report by the Board reflects the creation under Part 2 of the Code of a labour board whose structure and wider responsibilities are distinct from those of labour boards created under previous legislation. In this ninth Annual Report on the Board's activities, we will follow the same basic format as was used in previous reports, dealing first with the main events affecting the Board during the past year, and then with the workload and pattern of decisions of the Board in the various areas of its responsibility in 1982. As well, we will recall certain events which highlighted labour-management relations in B.C. in 1982, and which were manifested in proceedings before the Labour Relations Board.

II. PERSONNEL

At the commencement of the report year, the complement of the Board was twenty-four, composed of the Chairman: Stephen F.D. Kelleher; eight Vice-Chairmen: Ronald F. Bone (who also serves as Registrar), Rod Germaine, Ben van der Woerd, Angus Macdonald, Gabriel M. Somjen, Kenneth E. Albertini, Brian Foley and Allan E. Black; and fifteen part-time Members: Clarence J. Alcott, Daniel Bell, John Macdonald Billings, John Brown, Herbert Lowell Fritz, John Leslie Fryer, Jack Gerow, Charles C. Loyst, James McAvoy, Jack A. Moore, Nora A. Paton, Anthony D. Saunders, Arnold J. Smith, Douglas Quinn, and H. Henry Volkmann.

From that time, and up to January 31, 1983, there were several changes in the composition of the Board which resulted in a complement of twenty-six as of that date. Vice-Chairman van der Woerd left the Board to return to teaching duties at the British Columbia Institute of Technology. Vice-Chairman Rod Germaine left the Board to pursue a career as a labour arbitrator. Arnold J. Smith left the Board when his term of appointment as a Board Member expired. As well, Charles C. Loyst resigned his position of Member. The Board's roster of Vice-Chairmen was increased with the appointments of Peter Sheen, J. Dale Michaels and Alexander Markides. Wayne Carkner, Doris Hanson and Irving Froese were appointed as Board Members. The terms of three Members, Daniel Bell, John Fryer and Jack Gerow, expired on December 31, 1982. A decision from the Lieutenant-Governor in Council is expected shortly.

So, as of January 1983, there were twenty-three appointed Members, while the administrative and legal staff numbered forty-one.

Section 22 of the Code requires that the principal office of the Board be at or near Vancouver, the central location for labour relations activities within the Province. Since October 26, 1979, the Board's offices have been located at 1275 West 6th Avenue, in the City of Vancouver. They were formerly located at 1620 West 8th Avenue, in the City of Vancouver.

III. RESPONSIBILITIES OF THE BOARD

The history and details of the Board's responsibilities under the Labour Code and the British Columbia Labour Relations Board Regulations were extensively discussed in the 1974 Annual Report. The 1975 Report presented three Tables providing: an historical record of the Labour Code and its amendments (Table A); statutes conferring authority on the Board (Table B); and the Regulations made pursuant to the Code (Table C). In 1977, a new table was added setting out those statutes which affect the Board's authority (Table D.).

In the 1980 Report only, a brief table of concordance had been included to indicate changes in titles and chapter designations of the statutes listed in Tables A to D, as a consequence of the proclamation of the Revised Statutes of British Columbia (R.S.B.C.) 1979. This revision and consolidation of the Public General Acts of British Columbia included

certain changes in the title, language and structure of the Labour Code, as well as in many other public acts of British Columbia. The stated purpose of these changes was to provide a more uniform mode of expression in the public statutes and not for the purpose of effecting substantive changes in the law. Some pre-1979 statutes listed in Tables A to D were not included in the R.S.B.C. 1979 consolidation (they were indicated in Table E of the 1980 Report as "not consolidated"). Despite their absence from the consolidated statutes, these acts remain in full force and effect until repealed.

In addition to its mandate under the Labour Code, the Board has been charged with responsibility in labour relations matters under fourteen other statutes (Table B). By virtue of the Public Service Amendment Act, 1980, S.B.C. 1980, c.46, that part of the Public Service Act establishing the Public Service Adjudication Board, its jurisdiction and the right of parties to appear before it has now been repealed. The transitional provisions in Section 8 of the Public Service Amendment Act, 1980 allow the parties to decide how matters which were previously before the Public Service Adjudication Board are to be completed; in the absence of agreement, that Section allows for the disposition of those matters in accordance with Part 6 of the Labour Code. As a result, the Labour Relations Board has now assumed the general superintendency of the public service arbitration process and matters which previously fell within the jurisdiction of the Public Service Adjudication Board will now be heard by arbitrators on the panel of arbitrators in respect of the collective bargaining relationship between the Government of British Columbia and the British Columbia Government Employees' Union.

TABLE A

STATUTORY HISTORY OF THE LABOUR CODE(1) THE LABOUR CODE

<u>Statute</u>	<u>Date and Manner of Coming into Force</u>	<u>Sections in Force</u>	<u>B.C. Gazette References</u>
<u>Labour Code,</u> <u>R.S.B.C. 1979, c.212</u> <u>(formerly Labour Code</u> <u>of British Columbia,</u> <u>S.B.C. 1973, (2nd</u> <u>Sess.), c.122)</u>	November 13, 1973 Proclamation	12, 26, 124, 139, 140, 150	Reg. 424/74, Pt. II, V.16, p.645
	December 20, 1973 Proclamation	21, 55	Reg. 12/74, Pt. II, V.17, p.158
	January 14, 1974 Proclamation	1-11, 13-20, 22-25, 27-30, 32-54, 56, 59-69, 73, 92-112, 122, 123, 125-127, 138, 141-149, 150A, 151(a), 152	Reg. 41/74, Pt. II, V.17, p.192
	January 24, 1974 Proclamation	70-72	Reg. 53/74, Pt. II, V.17, p.195
	March 1, 1974 Proclamation	74-78	Reg. 154/74, Pt. II, V.17, p.407
	March 14, 1974 Proclamation	113-121A	Reg. 174/74, Pt. II, V.17, p.433
	August 15, 1974 Proclamation	57, 58	Reg. 578/74, Pt. II, V.17, p.949
	September 2, 1974 Proclamation	31, 79-91	Reg. 606/74, Pt. II, V.17, p.998
	September 16, 1974 Proclamation	151(b) and (c)	Reg. 682/74, Pt. II, V.17, p.1116

TABLE A CONT'D.

STATUTORY HISTORY OF THE LABOUR CODE(2) AMENDING ACTS

<u>Statute</u>	<u>Date and Manner of Coming into Force</u>	<u>Sections in Force</u>	<u>B.C. Gazette References</u>
<u>Statute Law Amendment Act, 1974,</u> S.B.C. 1974, c.87, s.22	October 14, 1974 Proclamation	22(a) (among others)	Reg. 709/74, Pt. II, V.17, p.1158
	June 20, 1974 Royal Assent	22(b) - 22(i) (among others)	N/A
<u>Essential Services Continuation Act,</u> S.B.C. 1974, c.108, s.6	August 9, 1974 Royal Assent	6 (among others)	N/A
<u>Elevator Construction Industry Labour Disputes Act,</u> S.B.C. 1974, c.107, s.6	November 26, 1974 Royal Assent	6 (among others)	N/A
<u>Labour Code of British Columbia Amendment Act, 1975,</u> S.B.C. 1975, c.33	June 26, 1975 Royal Assent	1-6, 8-33	N/A
	January 14, 1974 Retroactive Effect	7	N/A
<u>Labour Code of British Columbia Amendment Act, 1976,</u> S.B.C. 1976, c.26	June 30, 1976 Royal Assent	1-8	N/A
<u>Miscellaneous Statutes Amendment Act, 1976,</u> S.B.C. 1976, c.32	July 8, 1976 Proclamation	12A	Reg. 391/76, Pt. II, V.19, p.511

TABLE A CONT'D.

STATUTORY HISTORY OF THE LABOUR CODE(2) AMENDING ACTS

<u>Statute</u>	<u>Date and Manner of Coming into Force</u>	<u>Sections in Force</u>	<u>B.C. Gazette References</u>
<u>Labour Code of British Columbia Amendment Act, 1977,</u> S.B.C. 1977, c.72	September 27, 1977 Royal Assent	1-12	N/A
<u>Ministerial Titles Amendment Act, S.B.C. 1977, c.75</u>	October 21, 1977 Proclamation	Sch. I, Ss. 8(2), 127(3), 129(a), 136, 137(1)(a)	N/A
<u>Essential Services Disputes Act, S.B.C. 1977, c.83</u>	October 28, 1977 Proclamation	19 repeals 73(1) to (6)	N/A
<u>Miscellaneous Statutes Amendment Act, 1978,</u> S.B.C. 1978, c.28	July 6, 1978 Proclamation	11 amends 69	N/A
<u>Financial Administra- tion Act, S.B.C. 1981, c.15</u>	November 26, 1981 Proclamation	117 repeals 139(2)	Reg. 468/81, Pt. II, v.24, p.981
<u>Court of Appeal Act, S.B.C. 1982, c.7</u>	September 7, 1982 Proclamation		Reg. 302/82, Pt. II, v.25, p.428
<u>Labour Code Amendment Act, 1982,</u> S.B.C. 1982, c.59	August 4, 1982 Proclamation		Reg. 354/82, Pt. II, v.25, p.564

TABLE B

STATUTES CONFERRING AUTHORITY ON THE LABOUR RELATIONS BOARD

<u>Statute</u>	<u>Date and Manner of Coming into Force</u>	<u>Sections in Force</u>	<u>B.C. Gazette References</u>
<u>Labour Code,</u> R.S.B.C. 1979, c.212	Refer Table A	1-127, 138-154	
<u>Public Service Labour Relations Act,</u> R.S.B.C. 1979, c.346	January 3, 1974 Proclamation	1-14, 17-28 (amendments to ss.4, 11 and 17 yet to be proclaimed)	Reg. 14/74, Pt. II, v.17, p.160
<u>Assessment Authority Act,</u> R.S.B.C. 1979, c.22	June 20, 1974 Royal Assent	21 (among others)	N/A
<u>Institute of Technology Act,</u> R.S.B.C. 1979, c.199	July 4, 1974 Proclamation	7	Reg. 485/74, Pt. II, v.17, p.788
<u>Community Resource Board Act,</u> R.S.B.C. 1979, c.58	November 21, 1974 Proclamation	4	Reg. 781/74, Pt. II. v.17, p.1209
<u>Elevator Construction Industry Labour Disputes Act,</u> S.B.C. 1974, c.107	November 26, 1974 Royal Assent	3, 5 (among others)	N/A
<u>Hospital Services Collective Agreement Act,</u> S.B.C. 1976, c.21	June 9, 1976 Royal Assent	7 (among others)	N/A
<u>Ferry Corporation Act,</u> R.S.B.C. 1979, c.128	June 30, 1976 Royal Assent	23 (among others)	N/A

TABLE B CONT'D.

STATUTES CONFERRING AUTHORITY ON THE LABOUR RELATIONS BOARD

<u>Statute</u>	<u>Date and Manner of Coming into Force</u>	<u>Sections in Force</u>	<u>B.C. Gazette References</u>
<u>Railway and Ferries Bargaining Assistance Act,</u> S.B.C. 1976, c.48	June 15, 1976 [s.22(1)] Royal Assent on June 14, 1976	Part II (6-14)	N/A
	February 3, 1977 Proclamation	1, Pt. I (2-5)	Reg. 44/77, Pt. II, v.20, p.198
	October 6, 1977 Proclamation	Part II (19, 20)	Reg. 422/77
<u>B.C. Buildings Corporation Amendment Act, 1977,</u> S.B.C. 1977, c.32	August 18, 1977 Royal Assent	16A (among others)	N/A
<u>System Act,</u> R.S.B.C. 1979, c.399	September 1, 1977 Proclamation	17 (among others)	Reg. 349/77, Pt. II, v.20, p.665
<u>Essential Service Disputes Act,</u> R.S.B.C. 1979, c.113	October 28, 1977 Proclamation	1-18 (and schedule)	Reg. 465/77, Pt. II, v. 20, p.853
<u>College and Institute Act,</u> R.S.B.C. 1979, c.53	October 10, 1978 Proclamation	30(8)	Reg. 463/78, Pt. II, v.21, p.1219
	December 15, 1977 Proclamation	42 (among others)	Reg. 607/77, Pt. II, v.21, p.357
<u>West Kootenay Schools Collective Bargaining Assistance Act,</u> S.B.C. 1978, c.42	December 9, 1978 Royal Assent	10 (among others)	N/A
	January 15, 1979 Proclamation	11	Reg. 8/79, Pt. II, v.22, p.130
<u>Public Service Amendment Act,</u> S.B.C. 1980, c.46	August 21, 1980 Royal Assent	6-8 (among others)	N/A

TABLE C

REGULATIONS UNDER THE LABOUR CODE*

<u>Effective Date</u>	<u>Regulation No.</u>	<u>B.C. Gazette References</u>
December 28, 1973	1-36	Reg. 522/73, Pt. II, V.17, p.26
March 14, 1974	Amending Reg. 522/73	Reg. 162/74, Pt. II, V.17, p.410
September 4, 1974	37-43	Reg. 601/74, Pt. II, V.17, p.968
November 28, 1974	Amending Reg. 601/74 and 522/73	Reg. 786/74, Pt. II, V.17, p.1202
September 24, 1975	44	Reg. 616/75, Pt. II, V.18, p.861
December 22, 1976	45-47	Reg. 667/76, Pt. II, V.20, p.100
March 1, 1978	48-79	Reg. 39/78, Pt. II, V.21, p.437
August 19, 1978	80	Reg. 380/78, Pt. II, V.21, p.1074
November 27, 1979	17(2)	Reg. 541/79, Pt. II, V.22, p.1091

* The Lieutenant-Governor in Council is empowered by Section 150 of the Labour Code to make regulations and orders for the purpose of carrying out the provisions of the Act according to their intent. The regulations are cited as the British Columbia Labour Relations Board Regulations.

TABLE D

STATUTES AFFECTING LABOUR CODE

<u>Statute</u>	<u>Date and Manner of Coming into Force</u>	<u>Sections in Force</u>	<u>B.C. Gazette References</u>
<u>University Act,</u> R.S.B.C. 1979, c.419	October 7, 1977 Proclamation of s.38 <u>Miscellaneous</u> <u>Statutes Amendment</u> <u>Act, 1977, S.B.C.</u> 1977, c.76	80	Reg. 434/77, Pt. II, v.20, p.767

IV. AMENDMENTS TO THE CODE AND THE PUBLIC SERVICE LABOUR RELATIONS ACT

The greatest part of the Board's workload is generated by proceedings under the Labour Code. The Code was first enacted in 1973 and proclaimed in force in several stages throughout 1974. Since that time, it has been revised and clarified through various amendments. Some of these involved major substantive changes while others were purely technical refinements. Extensive revisions were made in the Amendment Acts of 1975 (Bill 84), 1976 (Bill 77) and 1977 (Bill 89).

In this report year, both substantive and technical revisions were made to the Code. Among other changes, the following are contained in the Labour Code Amendment Act, 1982: the definition of "professional strikebreaker" was amended to cover persons assisting an employer in a lockout; the Board's consent to a suit for damages as a consequence of conduct contravening Part 5 is to be given unless the party against whom damages are sought satisfies the Board that it is inappropriate to do so; the provisions of the Code regarding picketing were amended to require the Board's prior determination as to the status of a person to be picketed as an ally; the Board's discretion to prohibit picketing at other locations of an employer engaged in a labour dispute has been expanded to include situations where employees have been locked out; the definition of ally has been restricted by the substitution of the word "means" for "includes"; and the provisions of the Code regarding picketing at common sites have been amended to allow the Board to restrict picketing at such sites to employers or allies of employers causing a lockout or whose employees are on strike.

The definition of "employee" in the Public Service Labour Relations Act has been amended in Section 29 of the Miscellaneous Statutes Amendment Act, 1982, S.B.C. 1982, c.43.

V. HIGHLIGHTS

A. Strikes and Picketing

The 1982 report year saw a dramatic decline in the number of complaints and applications under Part 5 of the Code: as compared with 573 complaints and applications filed during 1981, only 256 such applications were received by the Board in 1982. This figure is also considerably lower than the 305 complaints and applications filed under Part 5 during 1980. In the 1982 report year, the Board's attempt to resolve such disputes at an informal level met with a marked degree of success: of the Part 5 applications disposed of, 210 such applications (constituting 80% of the total number) were settled, 197 with the assistance of the Board before a formal hearing commenced. Thirteen applications were settled by the parties once the proceedings reached the formal hearing stage. Only 51 applications under Part 5 had to be adjudicated by the Board (compared to 199 such applications in 1981): 30 of these applications resulted in Board orders and 21 were dismissed.

The drastic reduction in applications to the Board under Part 5 of the Code in 1982 was indicative of the industrial relations climate during 1982; there was also a substantial reduction in the number of labour disputes in British Columbia in 1982. In 1982, there were 54 work stoppages recorded,

involving 79,454 workers and the loss of 1,028,604 worker-days. In contrast, 1981 saw 159 work stoppages recorded, involving 120,817 workers and a loss of 3,232,817 worker-days.

In 1982, there were two major labour disputes which accounted for the vast majority of workers involved in work stoppages and worker-days lost. A province-wide lockout involving the Construction Labour Relations Association and various construction unions lasted from August 6 to September 7, involved 35,000 workers, and resulted in a loss of 700,300 worker-days. A strike by the British Columbia Government Employees' Union against the Government of British Columbia occurred in August, involved 32,000 workers, and resulted in a loss of 202,050 worker-days. Together, these two labour disputes were responsible for 84.3% of all workers involved in labour disputes, and 87.7% of all worker-days lost.

As significant as these two labour disputes were in terms of workers involved and worker-days lost, few applications were filed at the Board with respect to these disputes. In particular, the CLRA lockout generated only four such applications, none of which required formal adjudication by the Board. The BCGEU strike led to 20 picketing related applications. However, all but one of these applications were settled without the necessity of formal adjudication by the Board.

One interesting feature of the BCGEU strike was a framework which was developed by the parties for determining which services should be considered to be emergency or essential for the duration of the strike. The parties agreed that the matter of emergency and essential services would be dealt with by regional committees, and if these committees were unable to reach agreement, by the joint committee on emergency/

essential services. It was further agreed that if the joint committee was unable to reach agreement, either party could refer the matter to a vice-chairman of the Labour Relations Board, who would conduct a hearing and render a decision which would be binding on the parties. Most of the essential services issues were resolved by the parties themselves in either the regional committee or the joint committee discussions. Of the matters that were referred to the Board, all but one of those matters were eventually settled in further discussions with the assistance of Board members and staff. The one outstanding issue was resolved by a vice-chairman of the Board.

B. Raids

On an average, since 1974, 45 applications to replace or supplant an existing bargaining agent (commonly known as "raids") have been decided by the Board in each year. In 1982, 49 applications were disposed of by the Board which was consistent with previous years. Certain legal decisions which these raids produced are worthy of mention.

One raid which brought the Board's policy on membership into sharp focus was CAIMAW's raid on the United Steelworkers of America at Cominco Ltd. in Trail. That raid concerned 4,750 employees and was unsuccessful because CAIMAW failed to satisfy the Board that it had as members in good standing a majority of the employees in the unit at the time of its application. In a raid, as in any other application for certification, the union must satisfy the Board as to the current status of its membership. This requirement, known as the three-month policy, means that the union must show that

the member either joined the union within the three-month period prior to the date of the application or that the member has maintained active membership by paying dues within that three-month period. This CAIMAW failed to do. CAIMAW then argued that the Board's policy was either wrongly conceived or should not be applied to the facts of its case. In Cominco Ltd., BCLRB No. 44/82, the Board upheld the three-month policy on the basis that it set a minimum indicium of membership status which indicated that the member's status was current. The Board explained that its minimum membership criteria are designed to reflect the status of membership, not the subjective intent of the member. On this basis, the three-month policy would only be relaxed if there was significant unlawful interference in the raid campaign or if other circumstances existed which, in light of the other policies of the Code, would militate against the application of the three-month policy. The circumstances of CAIMAW's raid did not meet these requirements and, therefore, no representation vote was ordered.

An application for judicial review of the Board's decision is now before the Supreme Court of British Columbia.

Two decisions in 1982 focused on the voting process. In Metro Transit Operating Company, BCLRB No. 12/82, [1982] 2 Can LRBR 101, ICTU raided the incumbent ATU at Metro Transit. That application concerned 2,700 employees and was successful. However, the vote was close: there was only a difference of 16 ballots. After the scrutineers, who represented each party, had signed the return of poll, the ATU requested a recount. The Board decided that a request for a recount must be made by a scrutineer before the return of poll was signed unless there was evidence of misconduct or impropriety in the conduct of the vote. The complaints of the ATU did not meet this standard and, therefore, a recount was not ordered.

In Fiberglass Canada Limited, BCLRB No. 15/82, [1982] 2 Can LRBR 111, the Labourers received 58 votes while the incumbent ECWU received 57 votes. There were two spoiled ballots. Section 45(3) of the Code states that "a majority shall be determined as the majority of the employees in the unit who cast ballots". If the employees who spoiled their ballots cast them, then the raid would be unsuccessful. The Board found that an employee who spoils his ballot has not cast the ballot within the meaning of the Code. Therefore, the Labourers were certified.

In B.C. Forest Products Ltd., BCLRB No. 8/82, [1982] 1 Can LRBR 472, the Board permitted a partial raid of a geographical unit. The IWA's certification covered a geographical area that included four locations. The PPWC applied for one of the locations and the IWA argued that the unit applied for was inappropriate. The Board requires compelling reasons before it will consider fragmenting an existing unit in response to a raid. After reviewing the history and policy which gave rise to geographical units, the Board concluded that the employees' freedom of choice should prevail over the Board's policy against fragmentation in these circumstances. However, when the vote was counted, the result showed that the employees had rejected the raid by the PPWC.

Although the volume of raid applications disposed of in 1982 did not show a marked increase over previous years, the number of applications received by the Board in the last two months of 1982 took a dramatic increase. In 1982, the Board disposed of 49 raid applications, whereas it received in excess of 130 raid applications in November and December of 1982.

C. Section 4(2) of the Labour Code

In 1982, the Labour Relations Board issued the first decision in which it interpreted Section 4(2) of the Code which provides in part that where employees reside on property to which the employer or someone else has the right to control access, on the Board's direction a representative of a trade union shall be permitted to enter the property to attempt to persuade the employees to join the union. The Board decided that as a matter of policy, employees who live on premises owned or controlled by an employer should be afforded in relative terms, the same opportunity to acquire knowledge as to the benefits and advantages of trade union membership as those who reside off employer premises.

In H.S. Rai Farms Ltd. et al, BCLRB No. 11/8], [1982] 2 Can LRBR 104, the Canadian Farmworkers Union, Local 1, applied for a direction pursuant to Section 4(2) of the Labour Code. The employers were engaged in farming operations. The farmworkers at the operations had several types of living arrangements but, in this case, the Board was concerned with those who lived in housing supplied by the employers located on the employers' properties.

The union sought to organize the persons working for the employers and, in doing so, tried in a number of ways to reach the resident workers. However, efforts to organize the employees had been unsuccessful. The reasons given by the union were that:

- 1) Many of the subject employees could not read or write,

- 2) The employees were isolated and spent very few hours off the employers' premises,
- 3) Due to long working hours during the peak season, they did not have the same opportunity as employees working an 8-hour day to participate in organizational activities.

The Union also claimed that there existed a form of isolation for cultural reasons in that many of the farmers took a protective approach towards the people living on their farm. Thus, the employees did not have sufficient exposure to outsiders, whether union organizers or not.

In 1981, the union decided that the only way to communicate with these employees was to visit their living quarters on the employers' properties. Organizers thus came on to the properties and attempted to pass out leaflets to the resident employees. The common result was that when the farmers learned of the organizers' presence, they required them to leave.

The union requested the Board to direct the employers to permit union organizers on the properties for the purpose of persuading the employees to join the union. The Board rejected the union's argument that the Board ought to grant access in every case where the following two criteria are present: that the employees reside on the property of the employer, and that the employer has the right to control access. It stated that if it were the intent of the Legislature that that be the case, mandatory language expressly requiring the Board to grant access whenever the criteria are met would have been used.

The Board concluded that because the right to join a trade union is basic to the Labour Code, it should apply Section 4(2) in cases where the union does not have the same access to resident employees as it has to non-resident employees. The choice of collective representation should be open to persons who reside on their employer's property in the same way that it is available to the great majority of the work force who live away from the work site and travel to and from their job daily.

The Board rejected the argument that the Board only has jurisdiction to direct that one representative be permitted to enter an employer's property and granted two persons access to the employers' properties. These representatives were permitted six visits per month for a two-hour period between the hours of 6:00 p.m. and 10:00 p.m. The union representatives could meet with employees in the immediate vicinity of the cabins where the employees resided, but whether they could have access to the cabins themselves was up to the employees. Finally, the panel directed that the organizers notify the employers when they arrived at their premises.

The Build-Up Principle In Certification Applications

In Noranda Mines Limited (Goldstream), BCLRB No. 26/82, [1982] 2 Can LRBR 475, the Board reviewed the application of the build-up principle in various other jurisdictions and concluded that the question of whether a complement of employees present at the time of application for certification is "substantial and representative" is an appropriate consideration for it to take into account when reviewing certification applications. The decision was a reconsideration of an earlier decision. The original panel had considered an application for certification by the International Union of

Operating Engineers for the employees of Noranda Mines Limited at a new mining operation. At the time of the application, only 13 people were employed in the proposed bargaining unit out of a total projected figure of 155. The original panel held that although the unit was appropriate for collective bargaining and over 55% of the employees were members in good standing of the trade union on the date of the application, there was not yet a "mining operation" in existence. As well, the panel stated that the unit description "would purport to cover a large number of future production employees of whom it cannot be said that the present complement was a representative sample - either in terms of number or classifications". It thus granted certification for "... employees in pre-production at the Goldstream operation".

On reconsideration, the Board cancelled the pre-production certificate and adopted a version of the "build-up principle". It held that at the time of the application for certification, the proposed unit was not appropriate for collective bargaining in that a substantial and representative group of employees was not present. The Board stated that in making that finding, it was taking into account the fact that within a relatively short period of time, an overwhelming build-up in the complement of employees was scheduled to take place. Thus, the application by the Operating Engineers was premature. While normally such an application would be dismissed without prejudice to the applicant's right to re-apply when there is a substantial and representative complement of employees present, in the circumstances, a considerable degree of bargaining had taken place on the basis of the original certification, and a substantial and representative complement would very soon be in place. The Board thus ordered a vote to determine the wishes of the employees.

These principles were applied in B.C. Coal Ltd., BCLRB No. 36/82, [1982] 3 Can LRB 177, which involved an application by the United Mine Workers of America for reconsideration of a decision of the Board to certify the Operating Engineers for a unit of employees of B.C. Coal at its Greenhills project in the Elk River Valley.

In the fall of 1981, there were approximately 10 employees working at the project. It was expected that by mid-1983, the project would employ 400 persons in actual mining operations. The panel in the original decision had in fact certified the Operating Engineers for the unit. The panel had rejected the argument, among others, that any decision regarding certification should be delayed, stating that the wishes of the 10 employees for union representation should override concern relating to the build-up principle.

On reconsideration, the Board concluded that the 10 employees upon which the application for certification was based were not representative of the anticipated work force with reference to either number or classification. Thus, the application by the Operating Engineers was considered to be premature. Its certification was cancelled. A new date was established for the receipt of applications for certification. New applications were received and, after a representation vote, certification was granted to a different trade union.

VI. THE WORK OF THE BOARD IN 1982

In 1982, the Board received 4982 applications. This caseload represents a decrease from the 1981 figure of 6004. The Board disposed of 5219* applications in 1982, also a decrease from the 5560 applications disposed of in 1981. (The statistical assumptions on which these and other figures are based are stated at the beginning of the Appendix to this Report). This volume of cases must be administered by a Board which, under Section 13 of the Code, may legally sit at one time in any one of nine different Panel arrangements. To deal effectively with its workload, the Board has adopted certain procedural approaches which will be described in general terms here, before the details of the Board's decisions in 1982 are reviewed.

A large number of cases are processed on a strictly administrative basis. The application or complaint is investigated by an Industrial Relations Officer of the Ministry of Labour who files a report with the Board. This report, together with the submissions of the parties, is reviewed by a Panel of the Board, usually consisting of the Chairman or one of the Vice-Chairmen. In cases that are clear and uncontested a decision is made without a hearing.

In cases which are contested, the Board attempts to achieve a settlement before proceeding to the stage of a formal hearing and adjudication. This settlement procedure involves an attempt at mediation by the Industrial Relations Officer, by the Registrar and his staff, and/or by a Panel of the Board at a hearing. This policy is especially important in the following

* Including some applications carried over from 1981.

areas of the Board's work: unfair labour practices, disputes under a collective agreement brought to the Board under Section 96(1), and strikes and picketing complaints. In these areas, the Board successfully achieves a voluntary accommodation in approximately two-thirds of the cases. (The exact figures in each category are reproduced later in the Report: see Table 4.)

Finally, significant and contested cases which are not settled may be the subject of a hearing before the Board. Hearings are conducted by a Panel consisting sometimes of three members, and sometimes of one. To accommodate the parties to a dispute, hearings are often held at their request on short notice and at various places throughout the province. In 1982, the Board held 262 formal hearings (a decrease of 158 from the previous report year, due mainly to a decrease in applications pertaining to work stoppages and picketing). In addition, the Board often arranges informal meetings between the parties and one or more Board members, with the intention of forestalling formal litigation.

In contested cases that are unresolved by the parties and which involve significant issues of policy, the Board's general practice has been to give extensive written reasons for its decision. These reasons explain the Board's finding to the immediate parties and lay down general guidelines about the Board's policy and interpretation of the Code. The reasons are made available to unions, employers, counsel, and other interested parties. Decisions which the Board believes will constitute important precedents for the future are published in a series entitled Canadian Labour Relations Boards Reports, published by Butterworth & Co. (Canada) Ltd.

In the 1982 report year, the Board continued its general practice with respect to the preparation of formal written decisions. In several important areas which have been the

subject of major decisions, the Board has explained in considerable detail the policy framework of the Code and the approach which the Board will take in dealing with the chief issues in those areas. As a result, subsequent disputes under these sections of the Code frequently do not require extensive analysis except for the purpose of explaining to the parties immediately concerned how the Board has reached its particular conclusion. In cases of this kind, the Board has adopted the practice of expressing its reasons in the form of a letter decision to the parties affected. While available on request, decisions in this form are not normally published for the general labour relations community.

Under Section 36 of the Labour Code, a large number of applications are made to the Board for variances in the details of an existing certification or accreditation (and these are dealt with later in this report).

36. The board may, on application by any person, or on its own motion, reconsider a decision or order made by it or by a panel under this Act, and may vary or cancel the decision or order.

In addition, requests for reconsideration of decisions of the Board are also handled through the vehicle of Section 36. In 1982, the Board received 173 applications for reconsideration of this latter kind -- essentially appeals -- and 161* such applications were disposed of in the year. Of these, 18 were withdrawn, 125 were dismissed, and 18 resulted in a change in the original decision. (See Part XIII of Tables 1-4 and Table 13). Most of these consisted of appeals from decisions where there had been no hearing in the first instance.

* Including some application carried over from 1981.

The procedure for review of decisions by the Labour Relations Board is as follows. Where the Board decides to hold a hearing on the original application (or complaint), it sits and hears the case in a Panel consisting of either one or three members. Whether or not a hearing has been held, a party has fifteen working days from the issuance of the Board's decision to request reconsideration of that decision. In all cases, a Panel of the Board makes an initial determination about whether the stated basis for the reconsideration asserts a prima facie case for review of the original decision. Where a request for reconsideration is made, the parties are invited to file detailed written submissions, which can be developed further in oral argument if the Board decides to conduct a hearing. In a small number of cases which are of special significance to the labour relations community, the Board has invited representations from employer or trade union organizations to assist the Board in understanding the broader implications of its rulings.

This procedure for Board review provides a back-stop by which the Board is able to avoid or correct inadvertent errors and undo any miscarriages of procedural justice which may have occurred in the regular flow of its large caseload. It may also bring out into the open serious issues of law or policy which are implicit in the original decision and which a party contends have not been satisfactorily dealt with.

"Success" Rate of Appeals

	1978	1979	1980	1981	1982
Total Applications Disposed Of	155	137	140	171	161
Number of These Withdrawn	34	24	18	34	18
Number of Applications Processed To A Final Decision	121	113	122	137	143
Number of Applications Resulting In A Revision Of the Original Decision	31	33	46	37	18
"Success" Rate of Appeal	26%	29%	38%	27%	13%

With this preface regarding the Board's caseload and method of operation, we can now turn to the major areas of the Board's jurisdiction.

A. Certifications

The largest group of decisions made by the Board is in respect of applications for certification brought under Section 39* of the Code.

* s.39. (1) Where a collective agreement is not in force and a trade union is not certified as bargaining agent for a unit appropriate for collective bargaining, a trade union claiming to have as members in good standing not less than 45% of the employees in that unit may at any time, subject to the regulations, apply to the board to be certified for that unit.

(cont'd.)

S.39 Cont'd.

(2) A trade union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining may, subject to the regulations, apply to the board to be certified for the unit where

- (a) a collective agreement is not in force, and either
 - (i) 6 months have elapsed since the date of certification of a trade union for the unit; or
 - (ii) the board has consented to an application before the expiry of the 6 months; or
- (b) a collective agreement is in force, only during the period.

(3) Notwithstanding subsection (2), where

- (a) one or more applications have been made during a period, regardless of the outcome; or
- (b) the board, pursuant to section 57(3), certifies a council of trade unions as bargaining agent for a unit, or varies a certification by substituting for the trade union or trade unions named in it a council of trade unions as the bargaining agent for a unit,

a trade union may not apply to be certified for that unit or, in the case of a council of trade unions, for a constituent part of the unit, until the second period after the date of the application, the certification or the variation of a certification, whichever is latest.

(4) Notwithstanding subsections (2)(b), 3(a) or 3(b),

- (a) a trade union that is a party to a collective agreement, but is not certified for the employees covered by it, may apply to be certified at any time; and
- (b) a council of trade unions comprised of trade unions that are parties to collective agreements may apply to be certified at any time in place of those trade unions,

(5) Two or more trade unions claiming to have together as members in good standing a majority of employees in a unit appropriate for collective bargaining may join in an application under this Part, and the provisions of this Act relating to an application by one trade union, and all matters or things arising from it, apply to the application and those trade unions as if one trade union were applying.

(6) In this section "period" means the seventh and eighth months in each year of a collective agreement or a renewal or continuation of it.

Section 39 provides for two different kinds of applications, each with its own legal requirements. Under Section 39(1), a union may seek certification for a group of previously unorganized employees, i.e., those not subject to an existing certification or collective agreement. Section 39(1) provides that, in order for a union to make such an application and be entitled to at least a representation vote, it is required to have a minimum membership support of 45%. Section 39(2) provides that a union may seek certification for a group of employees already represented by another union. The minimum membership requirement in such cases is more than 50% and the application is subject to certain timing requirements, i.e., it must be made at specified intervals following the earlier certification or during the term of a collective agreement. Section 39(5) makes special provision for a joint application for certification by a number of unions. This Section was used once in the report year 1982.

The Board processed 916 certification applications in 1982. This represents an increase from the 848 applications processed in the report year 1981. Of the 916 applications processed in 1982, 150 were withdrawn (for a variety of reasons) leaving 766 to be formally decided by the Board. The majority of this number, 717 to be exact, were applications made in respect of previously unorganized employees. The remainder, 49 in number, involved employees then represented by a union.

Of the 717 applications under Section 39(1), a total of 43 were dismissed for reasons enumerated in Table 7. A total of 18 applications were found to be beyond the Board's jurisdiction, either on constitutional grounds or based on the definition of "unit" and/or "trade union". In another 8 cases, applications were rejected in circumstances either where the employees were to be represented by a different union or where a certification was varied to cover a larger unit which included the previous

unit description. Accordingly, of those cases within the Board's jurisdiction, 17 certification applications (2.5%) were denied in situations where the result was to leave the employees without any union representation.

The Board disposed of another 49 certification applications under Section 39(2) in respect of employees already represented by another union. This number represented over 6% of the total certification decisions in 1982. Forty-two applications involved presently certified bargaining units and were contested. The remaining 7 represent those applications which were either uncontested or made in an attempt to fragment or enlarge an existing unit. Of the 49 applications, 46 were made during the term of an existing collective agreement. The applicant union was successful in obtaining certification in 32 of the 49 cases. In one case, the application for certification was dismissed but an existing certification of the applicant union was varied to include the employees. The incumbent union retained its certification in the remaining 16 cases.

Since the subject of certification applications under Section 39(2) (or "raids" as they are commonly termed) has continued to generate considerable discussion in the labour relations community in British Columbia, it may be useful to present the pertinent data regarding the number of employees involved in such cases. In 1982, applications under Section 39(1) involved 7384 employees, of whom 6413 obtained union representation. By contrast, inter-union contests under Section 39(2) involved 11,192 employees, with a resulting change in union representation for 4175 of these employees. (See Table 8.) A review of the Board's files indicates that, of the total 42 cases and 11,192 employees, six inter-union rivalries resulted in more than one application and affected 8101 employees (72%). Inter-union contests between the Construction and General Labourers' Union and the Service Employees International Union

produced 12 applications involving 107 employees; between the Canadian Association of Industrial, Mechanical and Allied Workers and the United Steelworkers of America, two applications involving 4951 employees (61% of the total); between the Amalgamated Transit Union and the Independent Canadian Transit Union, two applications involving 2760 employees (34% of the total); between the Canadian Association of Industrial, Mechanical and Allied Workers and the International Association of Machinists and Aerospace Workers, two applications involving 170 employees; between the Retail, Wholesale Union and the Teamsters, two applications involving 90 employees; between the Canadian Brotherhood of Railway, Transport and General Workers and the Teamsters, two applications involving 23 employees. The balance of the contests affected a wide variety of unions.

In 1982, the number of employees receiving certification was 10,640, an increase from the 8962 employees receiving certification in 1981. The number of employees involved in a contested change of union representation increased from 1852 in 1981 to 4175 in 1982, an increase of 125%.

B. Representation Votes

In 1976, the Labour Relations Board set down in a formal judgment* its guidelines and policy regarding the conduct of representation votes. The Board policy described there remains the same, notwithstanding the subsequent amendments in respect of union membership requirements.

* Plateau Mills Ltd. and the International Woodworkers of America, Local 1-424, BCLRB No. 87/76; [1977] 1 Can LRBR 82.

Section 45* of the Code contains the criteria which govern the Board's disposition of certification applications.

Section 45(1) contains two alternative standards: either the applicant union must have more than 55% membership support at the time of application, or a majority of the employees in the proposed unit must express their wish to be supported by the union through a representation vote. If the Board finds through its investigation that the union has as members between 45% and 55% of the employees, then Section 43(2) directs that a vote shall be taken among the employees in the unit. Section 45(3) specifies that, for purposes of certification applications, the majority judgment in a representation vote is based on the number of employees who cast ballots. However, the 1977 amendments added a proviso to that basic tenet (see Section 45(4)).

* s.45. (1) Where the board is satisfied that on the date it receives the application for certification more than 55% of the employees in the unit are members in good standing of the trade union, or a majority wish to be represented by the trade union, and that the unit is appropriate for collective bargaining, the board shall certify the trade union as bargaining agent for the unit.

(2) In deciding whether a person is a member in good standing of a trade union, the board may decide the question without regard to the constitution and bylaws of the trade union.

(3) For the purposes of subsection (1), where a representation vote is taken, a majority shall be determined as the majority of the employees in the unit who cast ballots and who vote to elect the trade union as bargaining agent for the unit.

(4) Notwithstanding subsection (3), where

(a) a representation vote is taken; and

(b) less than 55% of eligible employees cast ballots, the board may direct that another representation vote be taken, and in that event subsection (3) applies.

If a union seeks certification without the holding of a representation vote, the Board must be satisfied that, on the date it receives the application, more than 55% of the unit employees were members in good standing. If the Board is thus satisfied, Section 45(1) of the Code requires the Board, if it is also satisfied that the unit is appropriate for collective bargaining, to certify the applicant trade union. Nevertheless, even in the situation where the trade union has more than 55% of the employees as members, it has been argued that the Board should order a vote as a matter of course upon the request of an employer or a petition of the employees. Section 43(1)* enables the Board, in any case, to conduct a representation vote to determine the employees' wishes. However, reading that subsection together with Section 45(1), the Board has concluded that it is not the policy of the Code to require a vote as a pre-condition for certification of a previously unorganized unit of employees. As the Board explained in Plateau Mills, the Code assumes that when a majority (now more than 55%) of employees have signed union membership cards, it constitutes a valid expression of their wish that the trade union represent them. Once more than 55% of the employees have made their initial choice in favour of the applicant union, the Code confers exclusive bargaining authority on the union (Section 46) and gives it at least ten months within which to exercise that authority (Section 52).

These are the reasons for the general rule that a representation vote is not a necessary standard vehicle for obtaining certification. In Plateau Mills, however, the Labour

* s.43. (1) The board, to determine whether the employees in an appropriate bargaining unit wish to have a particular trade union represent them as their bargaining agent, may order that a representation vote be taken, in accordance with the regulations, among the employees of the unit.

Relations Board did outline some special cases where it orders representation votes under Section 43: for example, if there is concern about fraud or coercion in the manner in which employees were signed up as members; or if the unit has been substantially enlarged between the date of the application for certification and the date of certification itself.

There are instances other than a single application from a trade union for certification of previously unorganized employees where the Board would use representation votes. In a number of applications, two unions may satisfy the majority membership requirements under Section 45, in which case the Board cannot certify one union under Section 45 on this basis alone. Except in the most unusual circumstances, the Board will order a vote in such a case between the two competing unions. Ten months or more after certification, the Board may use a vote of the employees in the bargaining unit to determine whether the trade union has ceased to represent a majority of the employees (Section 52(2)). Under Section 53(2), a vote may be ordered when a trade union applies for succession rights and obligations on the sale or transfer of the business of the certified employer. Before the Board declares that there has been a merger, amalgamation or transfer of jurisdiction among trade unions, it may order a vote of the affected employees. (See Section 54(2).) Section 40(3) of the Code makes it mandatory for the Board to conduct a representation vote when it has before it an application for a multi-employer certification. Votes are used to determine consent to trade union representation of dependent contractors (Section 48(1)) and professional employees (Section 153). If a trade union so requests, a representation vote may be taken prior to determination of the appropriate bargaining unit on a certification application (Section 44(1)). Finally, within the framework of

a Section 57 enquiry, a representation vote may be conducted. (For statistics on the Labour Relations Board's use of the representation votes described here, see Statistical Appendix page 62, and Table 9.)

C. Unfair Labour Practices and Remedies

Section 2 of the Labour Code states that "every employee is free to be a member of a trade union and to participate in its lawful activities". The scope of this freedom is defined and protected by a network of legal restrictions on the conduct of either employers or trade unions which may infringe upon the exercise of such freedom.

Section 5 prohibits coercion or intimidation of any kind which might compel or induce a person to be or not to be a union member. Section 3 contains a series of specific directives to employers which are of special importance in a union organizing campaign. The employer may not interfere in the formation of the union or favour one union over another; it may not refuse to hire because of union membership or manipulate working conditions to discourage unionization; it may not threaten loss of jobs or plant shutdown in the event of certification. Of prime importance is the legislation governing the discharge of an employee for union membership or activities. Recognizing the serious impact this can have on employees and the difficulty the union has in establishing the employer's motivation, the Code places on the employer the onus to establish affirmatively that such a discharge did not stem from an improper anti-union purpose. (See Section 8(6).)

The employer's right to run its business efficiently and without the interference of a union organizing campaign during working hours is protected by Section 4. Once a trade union is certified, Section 6 requires both the employer and the union to bargain in good faith and make every reasonable effort to conclude a collective agreement. Since certification gives the union the exclusive legal authority to bargain on behalf of all employees, Section 7 prohibits the union from acting in a manner which is arbitrary, discriminatory, or in bad faith, in the representation of any of these employees.

What are the steps which the Board can take under Section 8(4) of the Code when it finds that a violation of the law has occurred? The basic remedy under the statute is a cease and desist order under Section 8(4)(a) against illegal conduct by a trade union, an employer, or any other person. This power of the Board is supported by further remedies specifically tailored to certain problems. The one most often used in practice, because of the large number of discharge cases handled, is the Board's power under Section 8(4)(c) to order reinstatement and/or back pay for an employee discharged or otherwise disciplined contrary to Section 3(3)(a). Also useful is the remedy contained in Section 8(4)(d) of the Code under which the Board may forestall, for as long as sixty days, any employer attempts to influence employee freedom of choice by altering wages or other working conditions. A remedy of considerable value (and some controversy) is Section 8(4)(e) which gives the Board discretion to certify or to refuse to certify an applicant trade union in circumstances where an unfair labour practice has made it difficult to determine the true wishes of the employees.

In 1982, the Board received 342 complaints of violations of these several provisions of the statute, 17% greater than the number received in 1981. The Board disposed of 307 complaints; 219 were settled without adjudication, usually through the assistance of an Officer of the Board and four were withdrawn prior to any significant Board involvement. Of the remaining 84 complaints formally decided by the Board, 75 were rejected and 9 resulted in findings of unfair labour practices. Hearings were held for 88 applications and 8 of the 84 Board decisions were accompanied by written reasons in a formal Board decision.

Section 3

The source of the largest number of unfair labour practice charges is some type of employer activity designed to discourage employees from unionization. Of the 307 unfair labour practice cases disposed of by the Board in 1982, 167 alleged violations of Section 3 of the Code. Two of these were withdrawn prior to any significant Board involvement. Of the remaining 165 complaints, 107 alleged dismissals contrary to Section 3(3)(a), while another 58 complained of employer tactics short of actual discharge. Of these 58 complaints, 54 involved allegations of improper attempts to induce or compel abstention from union membership and four were based on alleged interference with trade union administration.

The most numerous and significant unfair labour practice complaint is that concerning discharge for union involvement, alleged in 107 of the 307 complaints. Almost all of these 107 complaints were brought by trade unions; only two cases were filed by the individuals affected. Settlements were reached with the assistance of the Board or one of its Officers in 95 cases. Twelve discharge cases required adjudication by the Board.

Thirty-three of the 107 dismissal complaints were withdrawn by the unions involved and Board records do not indicate the fate of the dismissed employees. Of the remaining 74 dismissal complaints, including settlements and decisions, 65 culminated in some form of positive relief for at least some of the employees affected.

The Board's power under Section 8(4)(c) to order reinstatement and/or back pay was the basis of four Board decisions involving 29 employees. Seven of these employees were reinstated with back pay. Twenty-two employees were to be rehired as required on the basis of seniority.

Fifteen complaints requested certification under Section 8(4)(e) in conjunction with a complaint under Section 3. Two of these requests were granted. We note that in seven of the cases the union did secure certification under Section 45 of the Labour Code.

Section 4

One complaint was filed by an employer alleging that a union had been organizing on the employer's property during working hours. This case was settled.

Section 5

In 1982, the Board dealt with 10 complaints under Section 5 of the Labour Code. In five of these complaints, one union alleged a rival union had improperly tried to influence employees in their choice of union representation. Three of these complaints were dismissed, the other two, settled.

Two complaints were filed by an employer against a union. One case was settled and in the other case, a violation was deemed to have occurred. Two complaints were filed by a union against an employer. Both were settled. One complaint by employees against a union was settled.

Section 6

There were 37 complaints disposed of alleging a refusal to bargain in good faith as required by Section 6 of the Code. Two of these were withdrawn prior to any significant Board involvement. Of the remaining 35, 30 were filed by unions, four by employers and one by an employer organization.

Of the 35 charges of failure to bargain in good faith, 27 were voluntarily resolved. Seven of these complaints were rejected by the Board. In one case a violation was deemed to have occurred.

Section 7

In 1982, the Board disposed of 90 complaints by individual employees alleging a violation by their union bargaining agent of the duty of fair representation contained in Section 7 of the Code. Forty-six of these complaints were voluntarily resolved through the efforts of an Officer or a member of the Board. Forty-three complaints were rejected by the Board. In one case, orders were issued to proceed to arbitration and to compensate the complainant for expenses incurred.

The Board also dealt with two complaints pursuant to Section 7 filed by union members of bargaining councils against those councils. One of these complaints was settled, the other dismissed.

Section 70

Although not located in the unfair labour practice part of the Code, the controversial power of "first contract arbitration" conferred on the Board by Section 70 may usefully be reviewed here. As a practical matter, this power is designed as a remedy for those cases where there were difficulties between the parties at the representation stage and they have not been able to engage in serious, good faith bargaining following certification.

Following referral of the dispute by the Minister of Labour, the Board has the power to settle the terms of the collective agreement for a period of one year. The Board has imposed 12 contracts since Section 70 was introduced. However, it should be noted that the Board does not automatically impose a first collective agreement on the parties, even where a persuasive application is made. Instead, it makes a determined effort to secure a voluntary settlement of the agreement. The objective of Section 70 is to foster an enduring collective bargaining relationship. In the Board's view, a solution agreed to by both parties is a much better foundation for such a relationship than an order imposed by the Board.

In 1982, there were no applications under Section 70 referred to the Board by the Minister. Two cases, received in the preceding year, were disposed of in 1982. Both were settled without a Board decision.

D. Applying the Code to the Bargaining Relationship

Once the issue of union representation is disposed of, the Board is required to apply the provisions of the Labour Code to a large number of issues which may arise in a collective

bargaining relationship. Some of these revolve around the original certification. For example, Section 51* of the Code requires the consent of the Board to changes in working conditions while a certification application is pending. Section 61 imposes the same requirement for four months following certification and notice to bargain. The Board's policy under these Sections is to enquire from the trade union whether it objects to the proposed alteration. Ordinarily, the union does not object and the application is granted. In those cases where the union does object with reasons, the Board usually withholds permission. This report year saw 24 applications disposed of under these Sections. Of the 24 applications, 10 were withdrawn, nine were granted and five were rejected.

Another question which may arise during a certification application is whether certain individuals are "employees" under the Code and, if so, whether they are properly included in a bargaining unit. The policy of the Board is not to proceed with such questions until after the certification is completed, except in those rare cases where the status of certain individuals in question may affect one way or the other the majority status of the union. Following certification, either the trade union or the employer may apply to the Board under Section 34 for a determination of the position of the person under the Code and the bargaining unit. Such questions also arise during the course of the collective bargaining relationship when new persons are hired or job functions changed. In 1982, there were 190 new applications filed under

* s. 51. (1) Where an application for certification is pending, a trade union or person affected by the application shall not declare or engage in a strike, an employer shall not declare a lockout, and an employer shall not increase or decrease rates of pay, or alter a term or condition of employment of the employees affected by the application, without the board's written permission.
 (2) This section shall not be construed as affecting the right of an employer to suspend, transfer, lay off, discharge or discipline an employee for proper cause.

Section 34, almost all directed to this issue, and a total of 209 applications were disposed of by the Board. The practice of the Board is to have an Industrial Relations Officer investigate the factual nature of the individual's position and make a report.

Once collective bargaining has been established, material changes in circumstances can require a decision of the Board adjusting the certification to the new situation. Most of these take the form of an application to the Board under Section 36 for a variance of a certification or accreditation. A number of cases involve applications under Sections 53 and 54, the successorship provisions of the Code, and under Section 37, the "common employer" provision.

In 1982, the Board received 354 applications for certification variance, a decrease of 50% from the 1981 figure. Most of these applications involve a simple change in the name or address of the employer or the trade union and are simply processed. In a few cases, however, the requested variance would have the effect of increasing or decreasing the number of employees in the existing bargaining unit, and these are often contested. The policy of the Board in these cases is to exercise its discretion under Section 36 in accordance with the principles established by the Code for certification or decertification proceedings, and particularly to investigate the wishes of the group of employees concerned.

Quite frequently, there is a fundamental change in the identity of a party to the certification. Many of these occur as a result of the sale of its business by the employer. Section 53(1) provides for the automatic transfer of the certification and the collective agreement in such cases. In

cases where the application of Section 53* is questionable, particularly where there may be an overlapping of bargaining rights, the parties may apply to the Board under Section 53(2) for a clarification of the issues. Section 53(3) gives the Board greater flexibility in such cases. The Board received 269 applications under Sections 53 and 54 (which deals with one union applying to succeed another) during 1982, a decrease from the 421 received in 1981.

Less often, a change in the identity of an employer

* s.53. (1) Where a business or part of it or a substantial part of its entire assets are sold, leased, transferred or otherwise disposed of, the purchaser, lessee or transferee is bound by all proceedings under this Act before the date of the disposition, and the proceedings shall continue as if no change had occurred; and where a collective agreement is in force, it continues to bind the purchaser, lessee or transferee to the same extent as if it had been signed by him.

(2) Where a question arises under this section, the board, on application by any person, shall determine what rights, privileges and duties have been acquired or are retained, and for this purpose the board may make inquiries or direct that representation votes be taken as it considers necessary or advisable.

(3) The board, having made an inquiry or directed a vote pursuant to this section, may

- (a) determine whether the employees constitute one or more units appropriate for collective bargaining;
- (b) determine which trade union shall be bargaining agent for the employees in each unit;
- (c) amend, to the extent it considers necessary or advisable, a certificate issued to a trade union or the description of a unit contained in a collective agreement;
- (d) modify or restrict the operation or effect of a provision of a collective agreement in order to define the seniority rights under it of employees affected by the sale, lease, transfer or other disposition; and
- (e) give directions the board considers necessary or advisable, as to the interpretation and application of a collective agreement affecting the employees in a unit determined under this section to be appropriate for collective bargaining

results from the fact that a single management group operates through two or more legally distinct business enterprises, usually companies or partnerships. When such corporate inter-relationships threaten existing or impending rights or obligations under the Code, the Board may act under Section 37* to treat all of the enterprises as one employer for the purposes of the Code.

In 1982, the Board disposed of 60 applications under this Section, 31 of them involving enterprises in the construction industry. Twenty-nine applications were settled or withdrawn. This was in part due to the procedures developed by the Board to expedite the applications arising in the construction industry and to promote the voluntary settlement of these cases. Of the remaining 31, the Board granted 16 with respect to at least some of the enterprises named in the application. The balance were rejected.

E. Administration of the Collective Agreement

Under Part 6 of the Labour Code, the preferred vehicle for resolution of disputes under a collective agreement is grievance arbitration. But under the statute, the Board does have a significant role to play in the administration of the collective agreement. In this part of the report, we deal with two major areas of Board involvement in this process.

* s.37. Where, in the board's opinion, associated or related activities or businesses are carried on by or through more than one corporation, individual, firm, syndicate or association, or a combination of them, under common control or direction, the board may treat them as constituting one employer for the purposes of this Act.

Section 96

Section 96(1)* gives the Board a comprehensive original jurisdiction in resolving grievances arising under the provisions of a collective agreement. This procedure has been used

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- * s.96. (1) Notwithstanding the provision required or prescribed under section 93 or 94,
- (a) if at any time prior to the appointment of an arbitration board or other body, either party to the collective agreement requests the board in writing to appoint an officer to confer with the parties to assist them to settle the difference, and the request is accompanied by a statement of the difference to be settled, the board may
 - (i) appoint that officer; or
 - (ii) proceed as provided in paragraph (c);
 - (b) where an officer is appointed under paragraph (a), the officer shall, after conferring with the parties, report to the board;
 - (c) where the board decides, under paragraph (a)(ii) to proceed under this paragraph, or the officer's report is made under paragraph (b), the board may, if it believes the difference, when referred to the board, is arbitrable,
 - (i) refer the difference back to the parties; or
 - (ii) inquire into the difference, and after the inquiry it considers adequate, make an order for final and conclusive settlement of the difference;
 - (d) where the board refers the difference back to the parties under paragraph (c)(i), the parties shall follow the procedure in the provision required or prescribed under section 93 for final and conclusive settlement of the difference;
 - (e) where the board
 - (i) inquires into the difference under paragraph (c)(ii); or
 - (ii) advises the parties that in its opinion the difference is not arbitrable,
 neither the Arbitration Act nor any other procedure for settlement of the difference applies; and
 - (f) where the board inquires into the difference under paragraph (c)(ii), it may exercise all the powers of an arbitration board under this Part, and its order for final and conclusive settlement of the difference is final and binding on the parties and on all other persons bound by the collective agreement, and all those parties and persons shall comply with the order.

consistently both by trade unions and employers since it was first introduced into British Columbia law in 1963 in the form of Section 22(4) of the old Labour Relations Act*. In this report year, the number of applications filed with the Board increased from 578 in 1981 to 713 in 1982.

Under Section 96(1), a party to a collective agreement may request the Board to appoint an Officer to assist in the settlement of a difference arising during the term of a collective agreement. The Board is not required to appoint an Officer simply because a party to an agreement has made such a request. But its practice has been to make an appointment if the difference between the parties appears to be arbitrable under the agreement and if all the steps in the grievance procedure prior to arbitration have been exhausted. This is because the Board considers that the primary purpose of Section 96 is to offer the parties help and advice in resolving their differences without the expense and delay of an arbitration hearing.

In the first seven report years, officer mediation under Section 96 of the differences arising under a collective agreement achieved a settlement of approximately two-thirds of the applications made to the Board. In 1981, the proportion settled was 68% of the total applications disposed of and in 1982, this proportion increased slightly to 71%.

The Board disposed of 720 applications under Section 96(1) in the report year. Of these, a total of 508 were voluntarily settled, almost all through the efforts of an Officer. This

* It should be noted that the availability of Section 96(1) as an alternative to arbitration is not mandated by law. Section 96(2) of the Code allows the parties, by specific agreement, to exclude the Board from any role in resolving grievances under their collective agreement.

very substantial rate of officer settlement is of major benefit to the labour relations community in British Columbia in two respects: the parties reach a voluntary accommodation of their differences under their own contract rather than having a binding decision imposed by an outside legal authority; in the process, a potentially serious over-loading of the arbitration procedure is avoided.

If the Officer appointed by the Board does not achieve a voluntary settlement of an arbitrable difference, the Board may either refer the difference back to the parties or inquire into the difference itself and make an order for final and conclusive settlement of the difference. In exercising its discretion about how it is to proceed in respect of unsettled Section 96 applications, the Board takes account of such factors as the nature and significance of the particular grievance, the character of the bargaining relationship between the parties, and the relative capability of Board procedure in achieving a satisfactory disposition of the dispute.

In a considerable number of cases, the Board exercises its powers under Section 96(1)(c)(ii) to make a binding decision on the basis of the Officer's report and submissions from the parties. Generally speaking, these involve minor grievances which the Board anticipates would not go to arbitration or which would place a disproportionate burden on a party required to go to arbitration for a decision. The parties require an authoritative judgment on the merits of their case and a reasonable appraisal of these merits can be made on the basis of investigation and written submissions. Typical examples of such grievances are trade union claims against an insolvent employer for unpaid wages or fringe benefits, or for failure to deduct and remit union dues; differences about minor discipline;

and disputes as to the proper interpretation of specific contract language. The Board was able to dispose of 33 applications under Section 96(1) by administrative decision in the report year.

Each year, there is a sizable number of grievances which an Officer is not able to settle under Section 96 and where his report indicates that the matter is of considerable significance to the parties under the collective agreement and thus should receive the full consideration of an oral hearing. The Board's normal practice under Section 96(1)(c) is to refer these matters back to the parties for an arbitration hearing. This policy embodies the statutory principle that adjudication of key disputes under the agreement should be conducted in an environment which is under the control of the same parties who have negotiated the agreement. As well, the policy reflects the need for the proper allocation of the Board's own scarce hearing time amongst the five thousand or more cases which come before it each year. This policy is applied in such typical cases as these: unresolved disputes about the discharge of an employee where the facts are in dispute; unresolved seniority grievances in connection with a layoff or promotion where the relative qualifications of the affected employees are at issue; cases involving major issues of contract interpretation which may be of significant value as a future precedent and require reference to extrinsic evidence and argument about the relevant arbitral jurisprudence; situations where the parties have developed their own specialized dispute resolution procedures, such as jurisdictional disputes in the construction industry, or specialized job evaluation programs. In 1982, the Board referred 162 such cases back to the parties for arbitration under their collective agreement.

There is one important exception to the Board's policy that grievances which require a formal hearing should be held under the arbitration procedure established under the collective agreement. Where the difference between the parties raises an issue of general importance within the statutory responsibilities of the Board, the matter will normally be set down for a hearing in front of a Panel of the Board which will then proceed to adjudicate the grievance and prepare formal reasons for its decision. The following are examples of cases in which the Board has exercised its discretion under Section 96(1)(c) to adjudicate the grievance itself: grievances about an issue, for example, a discharge or work assignment, which has led to a wildcat strike or other form of industrial unrest; grievances which are tied to unfair labour practices, for example, the alleged discharge of an employee because of union activities or the alleged breach by a union of its duty of fair representation to the grievor; grievances in which the primary issue in dispute is the proper application of key statutory concepts, for example, "employee", "dependent contractor", "collective agreement"; grievances involving major issues of law and policy relating to the collective agreement and its proper interpretation, for example, the proper scope of disciplinary demotion. In 1982, formal hearings by the Board resulted in the issuance of 11 orders under Section 96(1)(c)(ii).

In summary, the Board disposed of 720 applications under Section 96(1) in the report year. Of these, a total of 508 were voluntarily settled, almost all through the efforts of an Officer but, on a number of occasions, through the intervention of a Panel of the Board. Four of the applications were withdrawn, two were determined to be non-arbitrable and 162 were referred back to the parties. The remaining 44 were adjudicated by the Board. Thirty-three of the latter turned on issues which would be disposed of on the basis of the Officer's

report and written submissions from the parties.

Tables 10 to 12 state in detail the results in applications brought under Section 96. Table 10 sets out the nature of the disposition and indicates which party was the beneficiary. Table 11 gives a breakdown of the cases by reference to the type of problem in dispute. Table 12 gives the industrial composition of the cases and the number of applications brought by unions and employers in each industry.

Over the last eight report years, the relative proportions in the origin of applications under Section 96(1) has fluctuated only slightly with 91% to 96% of the applications coming from unions and 4% to 9% coming from employers. In 1982, 678 of the 720 applications disposed of came from unions (94%) and 41 (6%) came from employers. One application was filed jointly by a union and an accredited employers' association.

An analysis of the 713 applications received by the Board in 1982 (see Table 16, column 4) reveals that seven unions filed over 30 applications. The Hotel and Restaurant Employees' and Bartenders' Union filed 126 applications (18% of the total); the United Steelworkers of America filed 66 applications (9% of the total); the Laborers' International Union of North America filed 46 applications (6% of the total); the United Brotherhood of Carpenters and Joiners of America filed 42 applications (6% of the total); the United Food and Commercial Workers' International Union filed 40 applications (6% of the total); the Canadian Union of Public Employees filed 40 applications (6% of the total) and the Pulp, Paper and Woodworkers of Canada filed 37 applications (5% of the total). While these are large unions, it is observed that each union has a considerable number of relatively small bargaining units, each with its own (and often unique) collective agreement.

Of the 407 employers who were respondents to union complaints disposed of by the Board in 1982, (see Table 12), a total of 369 employers (or 91%) responded to either one or two complaints. Indeed, in only six cases was an employer the respondent to more than ten applications. Turning to the 41 cases disposed of in 1982 in which the employer filed the application, there is the same wide distribution amongst the parties involved. Only one of the 30 employers who filed Section 96(1) applications brought more than 3 applications.

The Board continues to conclude, on the basis of these findings of the wide distribution in the use of Section 96(1) either by unions, employers, or industry, that there is no specific abuse of the procedure.

In early 1976, the Board issued its first official policy statement under Section 27* of the Code. That statement** examines the powers of the Board under Section 96 and attempts to formulate general guidelines for the exercise of the Board's discretion. In addition, the policy statement sets out in detail the Board's views of the purpose of the Section 96 procedure and how, within the larger framework of the Code, the use of that procedure may promote the constructive settlement of grievances and thus secure and maintain industrial peace during the term of the collective agreement.

* s.27. (2) The board may formulate general guidelines to further the operation of this Act; but the board is not bound by those guidelines in the exercise of its powers or the performance of its duties.

(3) In formulating general guidelines the board may request that submissions be made to it by any person.

(4) The board shall make available in writing for publication all general guidelines formulated under this section, and their amendments and revisions.

** BCLRB No. 12/76, [1976] 2 Can LRBR 17.

Section 108

The Board has another major role to play in the administration of the collective agreement under Part 6 of the Labour Code. Section 108 of the Code, enacted in mid-1975, gives the Board authority to review arbitration awards delivered under collective agreements. The Board has issued a number of major decisions outlining the view that it takes of Part 6 of the Labour Code as a whole in terms of the scope of the Board's supervision of arbitrators contemplated by the Code.

In its first major decision under this provision, Simon Fraser University, BCLRB No. 16/76, [1976] 2 Can LRBR 54, the Board indicated clearly that Section 108 does not afford the losing party in an arbitration proceeding a full-blown right of appeal to the Board on the merits of the arbitrator's decision. The Board carefully limits its enquiry to whether the party has been denied a "fair hearing" (as found, for example, in Board of School Trustees of School District No. 68 (Nanaimo), BCLRB No. 68/76, [1977] 1 Can LRBR 39) or whether the award is inconsistent with the principles expressed or implied in the Code or any other legislation dealing with labour relations (as found, for example, in University of British Columbia, BCLRB No. 42/76, [1977] 1 Can LRBR 13). Within those standards formulated in Section 108, the Board will not overturn an arbitration award on the basis of alleged mistakes in findings of fact or interpretation of contract terms.

In the report year, the Board received 66 applications under Section 108 and disposed of 45 such applications. Of the 45, a total of 23 were brought by employers, 21 by unions, and one by the grievor involved. Twelve dealt with arbitration awards regarding discharge grievances. Of the 45 disposed

of by the Board in 1982, six were withdrawn and 29 were dismissed.

The element of limited interference in grievance arbitration was reflected in the fact that in only ten applications was the decision of the arbitrator set aside. In seven cases, the grievances were referred back to the arbitrator; in two cases, the Board substituted another award; in one case, hearings to determine a substitute award were adjourned generally at the request of both parties

Of the 39 applications decided by the Board, eight were reviewed in a formal hearing and eleven were accompanied by reasons in a formal Board decision.

F. Strikes, Lockouts and Picketing

The Board, charged with the primary responsibility for administering the law relating to strikes, lockouts and picketing in British Columbia, received 256 applications under Part 5 of the Labour Code in 1982 and disposed of 261 in the report year. The 261 cases dealt with by the Board included 128 concerning alleged illegal strike action, 13 concerning alleged illegal lockouts and 120 concerning only some form of picketing activity.

In exercising its jurisdiction in this regard, the Board balances attempts at speedy decision-making and its effort to deal effectively with the underlying factors which have produced the illegal work stoppage or picketing. Officers of the Ministry of Labour as well as the Board's own staff and members are used by the Board in an attempt to achieve a satisfactory and mutually acceptable disposition of each dispute without the need for a formal hearing or adjudication. In

1982, this procedure led to a settlement of 210 applications (80%, considerably higher than the 65% in 1981), including 96 of the 128 strike applications, 8 of the 13 lockout complaints and 106 of the 120 applications in the picketing area. Thirteen of these applications reached a formal hearing before an accommodation could be reached by the parties.

Where such voluntary disposition of an application is not achieved, a Panel is convened, evidence and argument is heard and a formal decision is made. In 1982, 51 applications led to formal adjudication by the Board, 30 resulted in Board orders and 21 were dismissed.

Strikes and Lockouts

A fundamental principle of the Labour Code is that the legality of a strike depends upon its timing. The use of this economic weapon is prohibited through much of the life of the collective bargaining relationship. In particular, Section 93 requires that all disputes arising under a collective agreement are to be resolved without stoppage of work, either by arbitration or other techniques devised by the parties. Section 79(1) complements that requirement by prohibiting strikes during the life of a collective agreement. During the 1982 report year, the Board disposed of 128 applications in this area. Ninety-six of these were settled and the Board adjudicated the remaining 32.

Of these 32 applications, 24 alleged threatened or actual illegal job action during the term of a collective agreement, contrary to Section 79(1).

In 19 of the 24 cases, work stoppages, work slowdowns or refusals to perform specific duties were generated by real or felt grievances on the part of the employees concerning the manner in which the contract was being administered or by clauses in the contract allegedly allowing such job action. In 17 of the 19 cases, the Board ruled a violation had occurred. In 6 of the 17 cases, an order was issued, two of these accompanied by conditions designed to achieve a resolution of the underlying grievance. In the other eleven cases, the Board indicated it would issue an order upon a request from the complainant. The Board rejected the applications in two of the 19 cases because the job action did not constitute a strike under the Labour Code.

Regarding the remaining five of the 24 cases, in two cases the Board declared an agreement void under Section 90 of the Code; in one case, the Board refused to issue such a declaration. In one case, the Board ruled a collective agreement was not in effect and thus rejected the application and in one case, the Board declined to rule on an anticipated refusal to perform certain duties in support of a labour dispute between another employer and union.

Even when no collective agreement is in force, the legality of a strike is subject to certain preconditions under the Code. The parties must have bargained collectively, in good faith, with respect to the dispute and must have failed to conclude a collective agreement. The trade union must conduct a strike vote among the employees in the unit affected and must give 72 hours written notice (or such longer period as may be directed by the Board under Section 81(4) of the Code) to the employer that a strike is to occur. If a mediation officer has been appointed in the dispute, the strike must be postponed until the officer has reported to the Minister and the union has been so advised. Only after each of these conditions has been

satisfied does a strike become timely and legal. Two of the 32 strike applications adjudicated by the Board in 1982 alleged a violation of one or another of these requirements. The Board ruled a violation had occurred in one of these cases and dismissed the other.

The remaining six (of the 32) cases, requested relief under Section 90 of the Code from certain declarations or agreements and involved parties not bound to each other in a collective bargaining relationship. In two cases, relief was granted; in four cases, it was not.

The provisions of the Code with respect to the legality of employer lockouts mirror those which define the legality of employee strikes. During the 1982 report year, the Board disposed of 13 complaints alleging illegal lockouts. Eight of the 13 were settled without formal Board adjudication. In one case the Board ruled a violation had occurred. The Board dismissed the remaining four cases.

Picketing

When parties to a collective bargaining relationship reach an impasse in negotiating the terms of their collective agreement, either side may, subject to the legal restrictions already noted, use the economic sanction of a work stoppage to enforce its demands. The employer is legally entitled to attempt to continue operations by replacing the strikers so long as he does not use professional strike breakers. The union, on the other hand, is entitled to attempt to stop the employer's efforts to maintain his operations. The primary measure recognized by the law for that purpose is peaceful picketing within the limits permitted by the Labour Code. In the 1982

report year, the Board disposed of 120 applications pertaining to picketing. One hundred and six of these were settled and the Board adjudicated the remaining 14.

Picketing is legal only when it is carried on in connection with a lockout or a lawful strike. Therefore, picketing designed to force an employer to recognize the picketing union is prohibited by the Code. Of the 14 applications adjudicated by the Board concerning picketing, two alleged that the picketing was organizational in purpose and therefore outside the scope of permitted picketing under the Code. In one case, the Board found that the picketing should be prohibited. In the other case, the Board refused to rule on the proceedings.

Another principle of the Code is that the legitimate target of picketing is the struck employer and not an uninvolved third party. The one apparent exception in the Code, the "ally doctrine" actually seems to prove the rule. By involving itself in a bargaining dispute on the side of the struck employer against the striking union members, the ally forfeits its neutral status and exposes itself to the same kind of peaceful picketing and economic pressure as the struck employer. Two applications adjudicated in 1982 dealt with anticipated picketing directed at secondary employers which the striking unions alleged had allied themselves with struck employers. One of these applications was filed by the employer involved and the Board refused to issue an opinion on the grounds the anticipated picketing was unlikely to occur. The other application was filed by a union requesting a declaration regarding the "ally" status of a certain employer. In this case, the Board rejected the application on the grounds it lacked jurisdiction over this employer.

Where several employers share a common site of operations,

a picket line directed at one of these employers is not a discriminating instrument likely to affect only its intended target. Accordingly, the Code confers on the Board a broad discretion to give precise directions confining the impact of picketing to the struck employer and insulating third party employers from its damage. The Board disposed of two such applications by secondary employers in 1982 by restricting the scope of the picketing in one case, and refusing to exercise its discretion in the other case.

In addition to the above cases, the Board dealt with four cases involving pickets at actual or alleged secondary locations of a struck employer. In one case, the Board granted relief; in one case, the picketing was held to be lawful and was not restricted. In the remaining two cases, the Board refused to rule on the proceedings.

Two picketing cases ruled on by the Board resulted from real or felt grievances in situations where a collective agreement was in effect between the parties involved. In both cases, the picketing was deemed unlawful. The remaining two of the 14 picketing cases involved two instances of picketing by one trade union protesting certain actions of one employer. In both instances the picketing was deemed unlawful.

VII. STATISTICAL APPENDIX

A. Introduction

The following tables provide an analysis of the applications filed with and disposed of by the Labour Relations Board in 1981 and 1982.

In a few cases, multiple decisions resulted from one application. These were usually counted as single decisions. However, for two types of applications, where the volume of multiple decisions was higher, different methods were used. Board rulings regarding the status of employees under Section 34 were counted individually -- that is, one application requesting ten rulings was counted as ten decisions, while a withdrawal of an application was counted as one. Applications to vary accreditations requested varying numbers and types of decisions. Each application was counted as one decision but a footnote indicates the number of employers who were affected by these applications.

An application involving a dispute is classified as withdrawn if the request for withdrawal comes prior to the involvement of an Officer or a Board panel. An application withdrawn following such involvement is classified as settled.

It is important to note when using these figures as a guide that the work content of individual applications varies widely, both among different categories of applications and among applications in the same category. The work content of the administrative, investigative and decision-making functions can vary widely as well, from category to category and from application to application.

B. 1981-82 Comparisons

Applications Filed

In 1982, 4982 applications were filed with the B.C. Labour Relations Board, a decrease of 17% from applications filed in 1981.

In 1982, the Board experienced an increase from 1981, in seven of the 18 categories shown in Table 1, applications for decertification (35%), to review an arbitration award (29%), for the appointment of an officer to settle a grievance (23%), alleging unfair labour practices (17%), to vary an accreditation (10%), for a common employer declaration (9%) and for certification (5%).

Applications filed decreased from 1981 in seven categories, applications for first contract arbitration (100%), regarding alleged illegal strikes, lockouts and picketing (55%), to vary a certification (50%), to alter the terms and/or conditions of employment (45%), for the appointment of a strike vote observer (40%), for a successor status declaration (36%) and for an interpretation of the Labour Code as it applies to the collective bargaining relationship (27%). Four categories remained unchanged, applications for accreditation, to cancel an accreditation and for reconsideration of a Board decision as well as the miscellaneous category.

Applications Disposed of

In 1982, 5219 applications were disposed of by the B.C. Labour Relations Board, a decrease of 6% from 1981.

In 1982, the Board experienced an increase from 1981 in

seven of the 18 categories shown in Table 2, applications for first contract arbitration (from none to two), to vary a certification (86%), for the appointment of an officer to settle a grievance (45%), for a common employer declaration (18%), for certification (8%), alleging unfair labour practices (8%) and for decertification (3%).

Applications disposed of decreased from 1981 in nine categories, applications for accreditation (100%), regarding alleged illegal strikes, lockouts and picketing (54%), to alter the terms and/or conditions of employment (46%), for the appointment of a strike vote observer (40%), for a successor status declaration (39%), for an interpretation of the Labour Code as it applies to the collective bargaining relationship (28%), to review an arbitration award (8%) and for reconsideration of a Board decision (6%) as well as the miscellaneous category (1%). Two categories remained unchanged, applications to vary and to cancel accreditations.

C. General Information

In addition to the figures shown in the following tables, in 1982, the Board, of its own motion, made 283 decisions. Most of these were administrative and no employees were deprived of bargaining rights as a result of these decisions. Breaking down the 283 decisions, 170 were to vary certifications, 64 were to cancel or override certifications, 42 were to vary accreditations, and the remaining seven were decisions made under various other Sections of the Code.

Supervision of Strike and Lockout Polls

In 1981, 85,228 employees cast ballots in strike votes and 233 employers in lockout votes. In 1982, 58,594 employees and 515 employers cast such ballots.

Votes

For applications disposed of in 1982, 91 votes were conducted.

Sixty-three of the votes involved applications for certification, 58 of these involved only one application for certification, three involved two applications and two involved three applications.

The 63 votes involved 70 certification applications. Thirty-one of these applications, involving 1627 eligible voters, were filed under Section 39(1) or under 39(2) where the application was unopposed or was an attempt to fragment an existing unit. Of these, 16 (or 52%) produced a certification. Of the 42 contested applications under Section 39(2), the Board ordered votes for 39 applications, involving 6439 eligible voters, and the applicant won 27 (or 69%) of them. (See Table 9.)

One vote involved a variance of a certification to delete a portion of the presently certified bargaining unit. There were no votes involving dependent contractors.

Twenty-two votes (ordered under Section 52) involved decertifications, seventeen of these for cases where the application was opposed.

Two votes involved successorship applications.

One vote involved an appeal of a certification decision, one vote, an appeal of a decertification decision, and one vote, an appeal of a decision regarding the variance of a certification.

Hearings

Records indicate there were 262 formal hearings held in 1982. These hearings dealt with a varying number and type of application and were conducted over a varying number of days.

Numerous informal meetings between the parties to a dispute and various employees of the Board were held during the year. In the majority of cases, it was not necessary for the Board to proceed with a formal hearing following those meetings.

Certifications

Tables 7, 8 and 9 outline the results of the certification applications which were disposed of by the Board in 1982. Applying the criteria outlined in Table 8, in 1982 the percentage of successful applications to certify unorganized employees was 97.5%.

In 1982, two certifications were granted under Section 8(4)(e) but none under Section 43(3).

There were 48 applications in 1982 to vary certifications so as to expand the bargaining unit; 35 of these were granted adding 342 employees to existing certifications. There were no

votes held to decide these applications.

Three of the 48 applications were expansions to include dependent contractors. All three were rejected without a vote.

There were 70 applications to cancel certifications. Of the 40 cancellations granted, 22 were opposed by the certified unions and/or by some employees in the bargaining unit. For 17 of these applications, the employees voted to cancel the certification. The Board rejected 19 of the applications and 11 were withdrawn. The Board of its own motion cancelled or overrode 64 certifications for administrative reasons. None of these resulted in a loss of bargaining rights for the employees involved.

In addition to the above, four certifications were cancelled following appeals.

There were 273 applications regarding successor status. While the vast majority of these asked for a declaration of successor rights a few dealt with such other issues as seniority rights or collective agreement status. For 80 of the 273 applications, one union would be succeeding another; 77 of these were granted and three were withdrawn. For the remaining 193, one employer would be succeeding another; 145 of these were granted, 18 were rejected and 30 were withdrawn.

D. Miscellaneous

Table 2 indicates 870 miscellaneous decisions disposed of by the Board in 1982. These include the following.

In August of 1980, the Board assumed the functions of the Public Service Adjudication Board (that board being dissolved).

In 1982, 698 of the 870 applications related to these functions.

There were 90 applications under Section 28 (excluding applications pertaining to Part 5 of the Code). These included 32 applications alleging that the terms and conditions of employment had been altered in violation of the Code, 34 applications alleging failure to execute or comply with a collective agreement and fourteen alleging improper conduct in the negotiation of a collective agreement under Section 63 of the Code. The balance alleged violations of various other Sections of the Code.

Six applications for religious exemption were disposed of. Four of these were granted by the Board and two were withdrawn.

The Board disposed of 32 applications where one of the parties felt there had been an undue delay in negotiating a disputed issue. Thirty of these were settled without a Board decision. In one case, the parties were ordered to take the dispute to arbitration. In the other case, the Board dismissed the application and recommended the dispute be taken to the Umpire of the Jurisdictional Assignment Plan.

Twenty-one applications for a declaratory opinion (excluding applications pertaining to Part 5 of the Code) were disposed of by the Board. In seven of these cases, an opinion was issued.

The remaining 23 applications referred to a variety of Sections of the legislation administered by the Board.

ACHIEVEMENT OF A FIRST CONTRACT FOLLOWING CERTIFICATION

In the past seven Annual Reports, data regarding the degree of success in achieving a first contract was outlined for certifications granted in the period January 1, 1974, to June 30, 1980.

This study has been continued for two more six-month periods -- July 1, 1980, to December 31, 1980, and January 1, 1981, to June 30, 1981.

As stated in the 1981 Report, data was again retrieved from three sources -- the collective agreement records of the Labour Relations Board and of the Ministry of Labour in Victoria, and a questionnaire sent to trade unions regarding the status of bargaining.

The criteria for measuring the time elapsing remains the same. To compute the time required to achieve a contract, the time from the date of certification to the date of the signing of the collective agreement was calculated. Where the signing date was not available, the date the agreement was received by the Labour Relations Board was used. In the few instances where neither date was available, it was assumed the contract was signed within seven to twelve months following certification.

Again, the results must be qualified by the fact that 12% of the certifications (10% in the 1981 Annual Report) and 5% of the employees (5% in the 1981 Annual Report) were omitted from the study because contract data was not available.

The following is a summary of the results of this study since it began January 1, 1974. It should be noted that a large proportion (75% in the periods studied for this Report) of the units which obtain a contract prior to certification are small construction industry units.

<u>Certifications Granted To Unorganized Employees In</u>	<u>Percentage Achieving a Contract Prior to Certification</u>		<u>Percentage Without a Contract 18 Months After Certification</u>	
	<u>Units</u>	<u>Employees</u>	<u>Units</u>	<u>Employees</u>
the 1st half of 1974	51.5%	52.0%	9.0%	4.5%
the 2nd half of 1974	35.4%	10.1%	10.6%	6.5%
the 1st half of 1975	40.6%	36.0%	13.0%	10.6%
the 2nd half of 1975	57.9%	48.6%	11.2%	11.0%
the 1st half of 1976	54.1%	51.9%	10.1%	4.0%
the 2nd half of 1976	45.5%	29.7%	15.3%	11.5%
the 1st half of 1977	49.1%	29.4%	12.3%	19.9%
the 2nd half of 1977	49.2%	26.7%	19.5%	32.5%
the 1st half of 1978	43.1%	27.6%	10.6%	18.3%
the 2nd half of 1978	41.2%	17.5%	17.5%	33.6% *
the 1st half of 1979	43.8%	24.1%	14.8%	16.3%
the 2nd half of 1979	38.0%	17.4%	15.5%	25.3%
the 1st half of 1980	42.7%	18.8%	11.8%	6.4%
the 2nd half of 1980	42.8%	30.2%	10.0%	8.8%
the 1st half of 1981	45.3%	27.7%	12.8%	11.2%

* Another 22.1% of these employees had achieved a contract more than 18 months after certification but before the date of this report, (as had a certain, but much smaller percentage, in the other time periods).

FIRST CONTRACT ANALYSIS
CERTIFICATIONS GRANTED TO UNORGANIZED EMPLOYEES

	<u>2ND HALF</u> <u>1980</u>	<u>1ST HALF</u> <u>1981</u>
Number of Certifications Granted:	304	294
Less Certifications Where No Contract Information Was Available:	33	36
Number of Certifications in Study:	271	258
Number of Employees Covered by Above Certifications:	4410	3544
Less Employees for Whom No Contract Information Was Available:	165	252
Number of Employees Studied:	4245	3292

PERIOD OF TIME TO ACHIEVE A FIRST CONTRACT

	<u>2ND HALF</u> <u>1980</u>	<u>1ST HALF</u> <u>1981</u>	<u>2ND HALF</u> <u>1980</u>	<u>1ST HALF</u> <u>1981</u>
<u>Achieving a Contract</u>	<u>Number of</u> <u>Bargaining Units</u>		<u>Percentage of</u> <u>Bargaining Units</u>	
Prior to Certification	116	117	42.8%	45.3%
Within 6 Months of Certification	170	178	62.7%	69.0%
Within 12 Months of Certification	227	219	83.7%	84.9%
Within 18 Months of Certification	244	225	90.0%	87.2%
Balance Remaining Without a First Contract, 18 Months After Certification	27	33	10.0%	12.8%
<u>Achieving a Contract</u>	<u>Number of</u> <u>Employees</u>		<u>Percentage of</u> <u>Employees</u>	
Prior to Certification	1284	913	30.2%	27.7%
Within 6 Months of Certification	2083	1953	49.1%	59.3%
Within 12 Months of Certification	3437	2694	81.0%	81.8%
Within 18 Months of Certification	3873	2924	91.2%	88.8%
Balance Remaining Without a First Contract, 18 Months After Certification	372	368	8.8%	11.2%

FIRST CONTRACT ANALYSIS

DATA REGARDING THE STATUS OF NEGOTIATIONS, 18 MONTHS FOLLOWING CERTIFICATION, OF THE REMAINING BARGAINING UNITS AND EMPLOYEES, INDICATES THE FOLLOWING:

	<u>Number of Bargaining Units</u>		<u>Number of Employees</u>	
	<u>2nd Half 1980</u>	<u>1st Half 1981</u>	<u>2nd Half 1980</u>	<u>1st Half 1981</u>
Certification was cancelled	8	8	113	117
Contract was achieved after 18 months elapsed	3	5	132	53
Negotiations proceeding	0	1	0	6
Negotiations stalled	1	8	5	84
There are presently no employees in the bargaining unit	0	1	0	6
Employer temporarily closed down	2	3	8	11
Employer has gone out of business	12	4	107	16
Rejection of strike by vote	1	0	7	0
Employer hired non-union replacements	0	1	0	13
Awaiting results of arbitration	0	1	0	54
Contract not yet achieved, no reason given	0	1	0	8

TABLE 1
APPLICATIONS AND COMPLAINTS FILED 1981-1982

TYPE OF APPLICATION	1981	1982
I. <u>Certification</u>		
Applications	900	941
Variances	713	354
Cancellations	57	77
II. <u>Accreditation</u>		
Applications	1	1
Variances	*52	**57
Cancellations	0	0
III. Declaration of Successor Status	421	269
IV. Appointment of an Officer to resolve a dispute where a collective agreement is in effect	578	713
V. Complaints of Unfair Labour Practices	292	342
VI. To alter Conditions of Employment	44	24
VII. A request for an Interpretation of the Labour Code as it applies to the collective bargaining relationship	261	190
VIII. For a Board inquiry to settle the terms and conditions of a First Collective Agreement	2	0
IX. For a Board Order or opinion pertaining to alleged illegal strikes, lockouts and/or picketing	573	256
X. To treat several entities as one employer	58	63
XI. For a review of an arbitration award	51	66
XII. Miscellaneous	890	890
XIII. For Reconsideration of a decision	173	173
XIV. For the appointment of an observer of a strike or lockout poll	938	566
	<u>6004</u>	<u>4982</u>

* To add 153 employers, to delete 11 employers and to vary the names and/or addresses of 7 employers.

** To add 94 employers, to delete 12 employers and to vary the names and/or addresses of 18 employers and the address of one association.

Note: For further elaboration of the figures in Table 1, refer to the Statistical Appendix.

TABLE 2
APPLICATIONS AND COMPLAINTS DISPOSED OF 1981-1982

TYPE OF APPLICATION	1981	1982
I. <u>Certification</u>		
Applications	848	916
Variances	365	679
Cancellations	68	70
II. <u>Accreditation</u>		
Applications	1	0
Variances	*56	**56
Cancellations	0	0
III. Declaration of Successor Status	449	273
IV. Appointment of an Officer to resolve a dispute where a collective agreement is in effect	495	720
V. Complaints of Unfair Labour Practices	283	307
VI. To alter Conditions of Employment	45	24
VII. A request for an Interpretation of the Labour Code as it applies to the collective bargaining relationship	292	209
VIII. For a Board inquiry to settle the terms and conditions of a First Collective Agreement	0	2
IX. For a Board Order or opinion pertaining to alleged illegal strikes, lockouts and/or picketing	567	261
X. To treat several entities as one employer	51	60
XI. For a review of an arbitration award	49	45
XII. Miscellaneous	882	870
XIII. For Reconsideration of a decision	171	161
XIV. For the appointment of an observer of a strike or lockout poll	938	566
	5560	5219

* 152 employers were added to accreditations, 5 were deleted and the names and/or addresses of 9 employers and the name of one association were varied. Requests to delete 5 employers were denied. Requests to delete 3 employers were withdrawn.

** 102 employers were added to accreditations, 6 were deleted and the names and/or addresses of 13 employers were varied. Requests to add one employer, to vary the names and/or addresses of 4 employers and to delete one employer were withdrawn.

Note: For further elaboration of the figures in Table 2, refer to the Statistical Appendix.

TABLE 3

APPLICATIONS AND COMPLAINTS DISPOSED OF THAT
WERE DEALT WITH AT A FORMAL HEARING AND/OR WERE
DEALT WITH IN A FORMAL BOARD DECISION 1981-1982

TYPE OF APPLICATION	NO./APPLICA- TIONS AT FORMAL HEARINGS		NO./APPLICA- TIONS IN FORMAL DECISIONS*	
	1981	1982	1981	1982
I. <u>Certification</u>				
Applications	45	28	18	8
Variances	10	3	3	0
Cancellations	4	5	3	1
II. <u>Accreditation</u>				
Applications	0	0	0	0
Variances	1	0	0	0
Cancellations	0	0	0	0
III. Declaration of Successor Status	69	26	8	3
IV. Appointment of an Officer to resolve a dispute where a collective agreement is in effect	21	29	1	3
V. Complaints of Unfair Labour Practices	96	88	20	8
VI. To alter Conditions of Employment	1	0	0	0
VII. A request for an interpre- tation of the Labour Code as it applies to the collective bargaining relationship	27	32	10	2
VIII. For a Board inquiry to settle the terms and conditions of a First Collective Agreement	0	1	0	0
IX. For a Board Order or opinion pertaining to alleged illegal strikes, lockouts and/or picketing	259	59	46	15
X. To treat several entities as one employer	20	27	3	5
XI. For a review of an arbitration award	9	8	7	11
XII. Miscellaneous	40	49	6	7
XIII. For Reconsideration of a decision	44	29	19	18
	646	384	144	81

* Does not include letter decisions.

Note: The Board may deal with more than one application and/or complaint at one formal hearing. In 1982, the Board held 262 formal hearings.

TABLE 4
APPLICATIONS AND COMPLAINTS DISPOSED
OF BY TYPE AND DISPOSITION 1981-1982

TYPE OF APPLICATION		1981	1982
<u>I. Certification</u>			
Applications:	Granted	643	706
	Rejected	91	60
	Withdrawn	114	150
Variances:	Granted	310	626
	Rejected	21	21
	Withdrawn	34	32
Cancellations:	Granted	53	40
	Rejected	11	19
	Withdrawn	4	11
<u>II. Accreditations</u>			
Applications:	Granted	1	0
	Rejected	0	0
	Withdrawn	0	0
Variances:	Granted	48	55
	Rejected	5	0
	Withdrawn	3	1
Cancellations:	Granted	0	0
	Rejected	0	0
	Withdrawn	0	0
<u>III. Declaration of Successor Status</u>			
	Granted	418	222
	Rejected	10	18
	Withdrawn	21	33
<u>IV. Appointment of an Officer to resolve a dispute where a collective agreement is in effect</u>			
	Settled	339	508
	Board Arbitration	50	44
	Referred Back to Parties	97	162
	Not Arbitrable	2	2
	Withdrawn	7	4
<u>V. Complaints of Unfair Labour Practices</u>			
	Settled	198	219
	Orders Issued	25	9
	Rejected	60	75
	Withdrawn	0	4
<u>VI. To alter conditions of Employment</u>			
	Granted	25	9
	Rejected	8	5
	Withdrawn	12	10
<u>VII. A Request for an Interpretation of the Labour Code as it applies to the collective bargaining relationship</u>			
	Ruling Made	237	164
	Withdrawn	55	45

cont'd.

TABLE 4 CONT'D.

APPLICATIONS AND COMPLAINTS DISPOSED
OF BY TYPE AND DISPOSITION 1981-1982

TYPE OF APPLICATION		1981	1982
VIII.	<u>For a Board inquiry to settle the terms and Conditions of a First Collective Agreement</u>		
	Settled	0	2
	Contract Imposed	0	0
	Rejected	0	0
	Withdrawn	0	0
IX.	<u>For a Board Order or opinion pertaining to alleged illegal strikes, lockouts and/or picketing</u>		
	Settled	368	210
	Order or Opinion Issued	137	30
	Rejected	62	21
X.	<u>To treat several entities as one employer</u>		
	Granted	12	16
	Rejected	11	15
	Withdrawn	28	29
XI.	<u>For a review of an Arbitration Award</u>		
	Granted	6	10
	Rejected	37	29
	Withdrawn	6	6
XII.	<u>Miscellaneous</u>		
	Settled	92	94
	Decision Made	777	760
	Withdrawn	13	16
XIII.	<u>For Reconsideration of a decision</u>		
	Dismissed	100	125
	Varied	24	14
	Reversed	13	4
	Withdrawn	34	18
XIV.	<u>For the Appointment of an Observer of a strike or lockout poll</u>	938	566
TOTAL		5560	5219

Note: The category "Orders Issued" includes all Board rulings that a violation occurred, that a penalty should be reduced, or that a specific activity should be restricted. Formal orders were not necessarily issued.

The category "Rejected" includes decisions where the Board deems no violation of the Labour Code has occurred as well as decisions where the Board determines no further action is warranted.

TABLE 5

APPLICATIONS FOR CERTIFICATION FILED 1981-1982

INDUSTRY CODE		NUMBER OF APPLICATIONS		NUMBER OF EMPLOYEES*	
		1981	1982	1981	1982
I. <u>Manufacturing</u>					
101	Food & Beverage	17	12	1673	1888
102	Wood Products	25	15	1134	865
103	Metals (Refining and Fabrication)	37	23	708	413
104	Machinery, Transportation Equipment, Electrical Products	13	6	1332	146
105	Miscellaneous	66	51	1193	707
	Sub-Total	158	107	6040	4019
VI. <u>Construction</u>		386	422	2414	2334
III. <u>Trade and Service</u>					
301	Trade	67	61	941	613
302	Education & Health	57	26	2057	1023
303	Municipal	8	5	76	548
304	Miscellaneous	181	287**	2503	6139**
	Sub-Total	313	379	5577	8323
IV. <u>Other Industries</u>					
401	Mining	13	6	5327	546
402	Transportation	30	27	3050	246
403	Communication & Other Utilities	0	0	0	0
	Sub-Total	43	33	8377	792
	TOTAL***	900	941	22408	15468

* The estimate of employees per application is derived from the estimate on the union application. Variations do occur between the time of application and the time of disposal of the application.

** Includes 133 applications, involving 3859 employees, which were raids on bargaining units in the hospitality industry.

*** Includes some multiple counting where more than one union applied to cover the same group of employees.

APPENDIX TO TABLE 5

NUMBER OF EMPLOYEES IN BARGAINING UNIT 1981-1982

NUMBER OF EMPLOYEES PER BARGAINING UNIT APPLIED FOR	NUMBER OF APPLICATIONS FILED	
	1981	1982
0 - 10	644	663
11 - 20	122	127
21 - 30	44	47
31 - 40	24	24
41 - 50	21	28
51 - 60	6	6
61 - 70	6	4
71 - 80	4	12
81 - 90	2	3
91 - 100	2	5
101 - 200	12	18
201 - 300	3	1
Over 300	10	3

Median class of employees
per unit applied for:

0 - 10

0 - 10

Average number of employees per
bargaining unit applied for:

25

16

TABLE 6

APPLICATIONS FOR CERTIFICATIONS GRANTED 1981-1982

INDUSTRY CODE		NUMBER OF APPLICATIONS		NUMBER OF EMPLOYEES*	
		1981	1982	1981	1982
I. <u>Manufacturing</u>					
101	Food & Beverage	5	9	115	233
102	Wood Products	18	9	633	119
103	Metals (Refining and Fabrication)	29	19	189	410
104	Machinery, Transportation Equipment, Electrical Products	9	4	486	28
105	Miscellaneous	50	43	1075	616
Sub-Total		111	84	2498	1406
II. <u>Construction</u>					
		282	373	1669	2109
III. <u>Trade and Service</u>					
301	Trade	50	48	603	455
302	Education & Health	47	31	1293	1477
303	Municipal	5	6	24	81
304	Miscellaneous	124	136	1993	1997
Sub-Total		226	221	1913	4010
IV. <u>Other Industries</u>					
401	Mining	4	5	130	212
402	Transportation	20	23	752	2903
403	Communication & Other Utilities	0	0	0	0
Sub-Total		24	28	882	3115
TOTAL		643	706	1962	10640

* The estimate of employees per application is derived from the estimate on the union application. Variations do occur between the time of application and the time of disposal of the application.

TABLE 7
CERTIFICATIONS REJECTED IN 1982

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	NUMBER OF EMPLOYEES
A. <u>Organized Employees</u>		
1. Employees to be included in a larger unit already represented by applicant union	1	12
2. Less than a majority were union members at the date of application	1	4750
3. Applicant union rejected by employee vote	13	2659
4. Application untimely	2	9
5. Bargaining unit inappropriate	0	0
6. Applicant does not meet the definition of a trade union	0	0
Sub-Total	17	7430
B. <u>Unorganized Employees</u>		
1. Bargaining unit not under the jurisdiction of the Board	1	45
2. Less than 2 employees in the bargaining unit	6	N/A
3. Employees to be included in a larger unit already represented	6	59
4. Employees to be included in a larger unit not yet (but subsequently) represented	0	0
5. Less than the legal membership requirement signed up by the union at the date of application	5	53
6. Employees voted for no union	12	344
7. Employees voted for certification of another union	2	338
8. Bargaining unit inappropriate	11	132
9. Applicant does not meet the definition of a trade union	0	0
Sub-Total	43	971
TOTAL	60	8401

cont'd.

TABLE 7 CONT'D.

CERTIFICATIONS REJECTED IN 1982

	1982
C. <u>Number of Certification Applications Disposed of:</u>	916
Less: Applications Withdrawn	
Applications to cover presently organized employees	
Applications not under the jurisdiction of the Board	
Applications for an inappropriate bargaining unit	
Applications where employees are or will be represented through another certification	
Net	691
D. <u>Certification Applications for Unorganized Employees Rejected Because of:</u>	
Failure to meet membership requirements, or	
An employee vote against the union	17
D as a percentage of C:	2.5%

TABLE 8

CERTIFICATION APPLICATIONS DECIDED BY THE BOARD IN 1982

APPLICATIONS	GRANTED	REJECTED	TOTAL
Unorganized Employees	674	43	717*
Organized Employees	32	17	49
TOTAL	706	60	766
* Deleting the 26 applications for unorganized employees which were rejected because they did not come under the jurisdiction of the Board, because the employees involved were represented through another certification, because the bargaining unit was inappropriate or because the applicant did not meet the definition of a trade union, the percentage of successful applications to certify unorganized employees can be expressed as 674 out of 691 or 97.5%.			
NUMBER OF EMPLOYEES	GRANTED	REJECTED	TOTAL
Unorganized Employees	6413	971	7384
Organized Employees	4227	7430	11657
TOTAL	10640	8401	19041
ATTEMPTS BY ANOTHER UNION TO REPLACE AN INCUMBENT UNION	SUCCESSFUL	UNSUCCESSFUL	TOTAL
Number of attempts	27*	15	42
Number of Employees Involved	4175*	7017	11192**
* For one of the successful attempts, involving 12 employees, an existing certification with the successful union was varied to include these employees.			
** Includes some multiple counting as two unions applied to represent the same unit. One of the applicants was successful.			
The balance of the organized employees were involved in unopposed representation changes or attempts to enlarge or fragment existing bargaining units.			

TABLE 9

CERTIFICATION APPLICATIONS RESULTING IN A VOTE IN 1982

A. Number of applications pertaining to unorganized employees or to organized employees where the representation change was unopposed or was an attempt to fragment or enlarge a unit, which resulted in a vote	31 out of 724* or 4%
Number of successful applications	16
Number of unsuccessful applications	15
Percentage of successful applications	52%
Total number of eligible voters involved in the 31 applications**	1627
B. Number of applications involving attempts by another union to replace an incumbent union, which resulted in a vote	39 out of 42 or 93%
Number of successful applications	27
Number of unsuccessful applications	12
Percentage of successful applications	69%
Total number of eligible voters involved in the 39 applications**	6439

* A total of 766 new certification applications were decided upon by the Board in the report year 1982. Of these, 42 applications involved attempts by a union to win the right to represent a bargaining unit already actively represented by another union.

** This figure can vary from the number of employees originally applied for. In some cases, two or more applications were received resulting in one vote and thus one group of eligible voters.

TABLE 10

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER
TO SETTLE A GRIEVANCE UNDER AN EXISTING
COLLECTIVE AGREEMENT DISPOSED OF 1981-1982

NATURE OF DISPOSITION	NUMBER OF APPLICATIONS	
	1981	1982
A. <u>Settled</u>		
1. Issue disputed:		
(a) advantage to union	193	270
(b) advantage to employer	59	125
(c) advantage not decisive	34	66
(d) advantage unknown	28	32
2. Issue not disputed	25	15
Sub-Total	339	508
B. <u>Board Arbitration</u>		
1. Issue disputed:		
(a) advantage to union	22	16
(b) advantage to employer	24	16
2. Issue not disputed	4	12
Sub-Total	50	44
C. <u>Referred Back</u>		
(All issues disputed; advantage unknown)	97	162
D. <u>Not Arbitrable</u>		
(All issues disputed; advantage to the employer)	2	2
E. <u>Withdrawn</u>	7	4
TOTAL	495	720
<u>Summary</u>		
1. Issue disputed		
(a) advantage to union	215	286
(b) advantage to employer	83	143
(c) advantage not decisive	34	66
(d) advantage unknown	125	194
Sub-Total	459	689
2. Issue not disputed	29	27
3. Withdrawn	7	4
TOTAL	495	720

Notes: "Board Arbitration" includes all decisions by the Board finalizing a grievance, even though a formal Order may not have been issued.

The advantage goes to the trade union if they gain anything at all from filing the application.

"Not decisive" includes those withdrawn because it was decided to process the grievance through other means.

"Not disputed" covers those situations where the employer acknowledges the legitimacy of the grievance but is unable to settle because of financial difficulties.

TABLE 11
APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER
TO SETTLE A GRIEVANCE UNDER AN EXISTING
COLLECTIVE AGREEMENT DISPOSED OF IN 1982

GRIEVANCE PERTAINED PRINCIPALLY TO*	NUMBER OF APPLICATIONS
1. Dismissal or suspension	138
2. Wages	137
3. Use of non-union personnel (including subcontractors)	70
4. Layoff	67
5. Reprimand	41
6. Contributions for fringe benefits	30
7. Allocation of work	27
8. Promotion	24
9. Hours of work (including vacations, leaves of absence)	19
10. Work expenses	12
11. Sickness and accident benefit	12
12. Seniority	12
13. Demotion	12
14. Union membership	9
15. Jurisdiction	8
16. Job classification	8
17. Union dues	7
18. Work environment	7
19. Temporary assignment of duties outside grievor's classification	7
20. General collective agreement compliance	6
21. Grievance procedure	6
22. Union business	6
23. Job posting	5
24. Transfer	5
25. Job action	3
26. Hiring policy	3
27. Retirement benefit	3
28. Technological change	3
29. Inclusion of a position in the bargaining unit	3
30. Job evaluation	2
31. Temporary employees	2
32. Recognition clause	2
33. Training	1
34. Bereavement leave	1
35. Job description	1
36. Return to bargaining unit of a supervisor	1

* Frequently an application indicated more than one type of grievance involved. However, for the above analysis, the apparent major cause of the dispute was chosen to characterize the application.

TABLE 12

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER
TO SETTLE A GRIEVANCE UNDER AN EXISTING
COLLECTIVE AGREEMENT DISPOSED OF IN 1982

INDUSTRY		FILED BY UNION	FILED EMPLOYER	TOTAL
<u>I. Manufacturing</u>				
101	Food & Beverage	13	1	14
102	Wood Products	65	0	65
103	Metals (Refining and Fabrication)	37	2	39
104	Machinery, Transpor- tation Equipment, Electrical Products	30	10	40
105	Miscellaneous	32	1	33
Sub-Total		177	14	191
<u>II. Construction</u>				
		91	5	96
<u>III. Trade and Service</u>				
301	Trade	52	3	55
302	Education & Health	53	8	61
303	Municipal	24	4	28
304	Miscellaneous	177	3	180*
Sub-Total		306	18	324
<u>IV. Other Industries</u>				
401	Mining	64	0	64
402	Transportation	40	3	44**
403	Communication and Other Utilities	0	1	1
Sub-Total		104	4	109
TOTAL		678	41	720

cont'd.

* 112 of these originated in the hotel, restaurant and beverage dispensing industry.

** One application was filed jointly by an accredited employers' association and a union.

TABLE 12 CONT'D.

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER
TO SETTLE A GRIEVANCE UNDER AN EXISTING
COLLECTIVE AGREEMENT DISPOSED OF IN 1982

ANALYSIS OF APPLICATIONS FILED BY AN EMPLOYER	
EMPLOYER NAME	NUMBER OF APPLICATIONS
Canada Wire & Cable Ltd.	6
School District No. 36 (Surrey)	3
Town of Smithers	2
Canadian Aircraft Products Ltd.	2
Columbia Hydro Constructors Ltd.	2
Western Park Hotel Corporation	2
J.K. Campbell & Associates Ltd.	1
Cooper Reinforcements Ltd.	1
Cowichan District Hospital	1
City of Dawson Creek	1
Ecofab Manufacturing Ltd.	1
Finning Tractor & Equipment Co. Ltd.	1
Goodbrand Construction Ltd.	1
Gorge Road Hospital	1
Inter-City Express Ltd.	1
Johnston Terminals Ltd.	1
Kelly, Douglas & Co. Ltd.	1
School District No. 3 (Kimberley)	1
Kimberley Credit Union	1
Lochhead Haggerty Engineering & Manufacturing Ltd.	1
Muirhead Machinery Ltd.	1
Osborne Industries Ltd.	1
City of Port Coquitlam	1
St. Mary's Hospital	1
Shuswap Okanagan Dairy Industries	1
Surrey Power Lines Ltd.	1
J.C. Switzer & Co.	1
University of British Columbia	1
Vanguard Trailers	1
West Kootenay Power & Light Co. Ltd.	1
TOTAL	41
ANALYSIS OF APPLICATIONS FILED BY UNIONS AGAINST EMPLOYERS	
Number of employers subject to 1 application	318
2 applications	51
3 applications	16
4 applications	4
5 applications	4
6-10 applications	8
11-15 applications	1
more than 15 applications	5
Total employers	407
Total applications	678

TABLE 13
APPEALS DISPOSED OF IN 1982

TYPE OF DECISION BEING RECONSIDERED	DISMISSED	VARIED	REVERSED	WITHDRAWN	TOTAL
1. Certification	28	3	2	7	40
2. Appeal of certification decision	5	1	0	1	7
3. Vote re: certification	5	2	0	0	7
4. Variance of certification	4	2	1	2	9
5. Appeal of a variance of certification	1	0	0	0	1
6. Cancellation of a certification	3	0	0	0	3
7. Appeal of a cancellation of a certification	1	0	0	0	1
8. Vote re: cancellation of a certification	4	0	0	1	5
9. Variance of accreditation	1	0	0	0	1
10. Declaration of successor status	5	0	0	0	5
11. The disposition of a grievance under an existing collective agreement	4	2	0	0	6
12. Appeal of the disposition of a grievance under an existing collective agreement	1	0	0	0	1
13. Unfair labour practice adjudication	11	0	0	1	12
14. Appeal of an unfair labour practice adjudication	2	0	0	2	4
15. A Board ruling re: an interpretation of the Labour Code as it applies to the collective bargaining relationship	18	2	0	1	21
16. Appeal of a Board ruling re: an interpretation of the Labour Code as it applies to the collective bargaining relationship	4	0	0	0	4
17. A Board ruling re: more than one corporate entity being considered as one employer	3	0	0	0	3

cont'd.

TABLE 13 CONT'D.
APPEALS DISPOSED OF IN 1982

TYPE OF DECISION BEING RECONSIDERED		DISMISSED	VARIED	REVERSED	WITHDRAWN	TOTAL
18.	A Board ruling pertaining to alleged illegal strikes, lockouts and/or picketing	12	0	1	0	13
19.	A Board review of an arbitration award	3	1	0	1	5
20.	A Board ruling re: a request to claim damages	4	0	0	0	4
21.	A Board ruling re: allowing access to an employer's property	1	0	0	0	1
22.	A Board ruling re: the deduction from wages of a special union assessment	0	1	0	0	1
23.	A Board ruling re: a request for an opinion pertaining to jurisdictional assignment	1	0	0	0	1
24.	A Board ruling re: a council of trade unions	1	0	0	0	1
25.	A Board ruling re: permission to alter the terms and conditions of employment	1	0	0	0	1
26.	A Board ruling re: altering the terms and conditions of employment	1	0	0	0	1
27.	A Board ruling re: the commencement of collective bargaining	0	0	0	1	1
28.	Appeal of a Board ruling re: collective agreement compliance	0	0	0	1	1
29.	A Board ruling re: challenged strike votes	1	0	0	0	1
TOTAL		125	14	4	18	161

APPELLANT(S)	DISMISSED	VARIED	REVERSED	WITHDRAWN	TOTAL
1. Employer(s)	60	6	1	8	75
2. Union(s)	56	7	3	8	74
3. Employee(s)	8	1	0	1	10
4. Employer and Union	1	0	0	1	2
TOTAL	125	14	4	18	161

TABLE 14

APPLICATIONS FOR A BOARD ORDER OR OPINION
PERTAINING TO ALLEGED ILLEGAL STRIKES,
LOCKOUTS, AND/OR PICKETING DISPOSED OF IN 1982

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	AT A FORMAL HEARING	IN A FORMAL DECISION*
A. <u>Dispute settled by an investigating officer or a Panel of the Board</u>			
1. re alleged illegal lockout	8	3	0
2. re alleged illegal strike	66	4	0
3. re alleged illegal strike and picketing	19	1	0
4. re picketing (employer complaint)	102	4	0
5. re picketing (trade union application for a declaratory opinion)	4	0	0
6. re activity affecting business, etc. (S.90)	11	1	0
Sub-Total	210	13	0
B. <u>Dispute disposed of by a Board adjudication that a violation had occurred or would occur or that a specific activity should be restricted</u>			
1. re alleged illegal lockout	1	1	0
2. re alleged illegal strike**			
- work stoppage	11	11	4
- refusal to perform certain duties	5	5	2
3. re alleged illegal strike and picketing***			
- work stoppage	2	1	0
4. re picketing (employer complaint)			
- alleged secondary location of a struck employer	1	1	0
- organizational	1	1	0
- common site	1	1	0
- other	4	4	0
5. re activity affecting business, etc. (S.90)	4	4	3
Sub-Total	30	29	9

cont'd.

* Does not include letter decisions.

** Includes two adjudications with conditions.

*** Includes one Consent Order.

TABLE 14 CONT'D.

APPLICATIONS FOR A BOARD ORDER OR OPINION
PERTAINING TO ALLEGED ILLEGAL STRIKES,
LOCKOUTS, AND/OR PICKETING DISPOSED OF IN 1982

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	AT A FORMAL HEARING	IN A FORMAL DECISION*
C. Dispute disposed of: (a) by a Board adjudication that <u>no</u> violation had occurred or would occur or that a specific activity should <u>not</u> be restricted, or (b) by the Board refusing to rule on the <u>proceedings</u>			
1. re alleged illegal lockout	4	4	0
2. re alleged illegal strike			
- work stoppage	2	2	1
- refusal to perform certain duties	2	2	0
3. re alleged illegal strike and picketing			
- work stoppage	1	1	0
4. re picketing (employer complaint)			
- alleged secondary location of a struck employer	3	1	0
- ally	1	1	0
- organizational	1	0	0
- common site	1	1	1
5. re picketing (trade union application for a declaratory opinion)			
- ally	1	0	0
6. re activity affecting business, etc. (S.90)	5	5	4
Sub-Total	21	17	6
TOTAL	261	59	15

Note: The applications in Table 14 include those filed to avert threatened strikes, lockouts, and/or picketing (through a declaratory opinion, a jurisdictional decision, etc.) as well as those protesting some form of actual job action.

* Does not include letter decisions.

TABLE 15

APPLICATIONS FOR A BOARD ORDER OR OPINION
PERTAINING TO ALLEGED ILLEGAL STRIKES,
LOCKOUTS, AND/OR PICKETING DISPOSED OF IN 1982

INDUSTRY CODE*		FILED BY EMPLOYER(S)**	FILED BY UNION	TOTAL
I. <u>Manufacturing</u>				
101	Food & Beverage	10	2	12
102	Wood Products	16	0	16
103	Metals (Refining and Fabrication)	6	1	7
104	Machinery, Transpor- tation Equipment, Electrical Products	14	0	14
105	Miscellaneous	14	4	18
Sub-Total		60	7	67
II. <u>Construction</u>		103	1	104
III. <u>Trade and Service</u>				
301	Trade	17	3	20
302	Education and Health	3	1	4
303	Municipal	5	0	5
304	Miscellaneous	38	1	39
Sub-Total		63	5	68
IV. <u>Other Industries</u>				
401	Mining	1	0	1
402	Transportation	11	5	16
403	Communication and Other Utilities	5	0	5
Sub-Total		17	5	22
TOTAL		243	18	261

* Based on applicant's type of business.

** Not necessarily the employer of the respondents.

TABLE 16
APPLICATIONS FILED IN 1982 ANALYZED BY UNION

UNION NAME (Names have been abbreviated. Where possible, the commonly- used, shortened form appears.)	CERTIFI- CATION APPLICA- TIONS FILED BY	DECERTI- FICATION APPLICA- TIONS FILED AGAINST	UNFAIR LABOUR PRACTICE COMPLAINTS FILED BY	APPOINTMENT OF AN OFFICER APPLICA- TIONS FILED BY
Boilermakers	5	0	0	1
Bricklayers	4	0	1	2
C.L.A.C.	6	0	0	2
Carpenters	147	4	9	42
Cement Workers	0	0	0	1
Electrical Workers	7	2	5	10
Glaziers & Glass Workers	16	0	1	1
Iron Workers	51	2	2	27
Labourers	99	1	11	46
Machinists & Aerospace Workers	9	2	2	12
Operating Engineers	77	3	6	10
Painters	13	0	1	8
Plasterers	9	0	0	2
Plumbers	95	1	1	15
Sheet Metal Workers	2	1	0	4
Tilessetters	1	0	0	1
C.P.U.	0	0	0	2
I.W.A.	14	5	7	17
P.P.W.C.	6	0	4	37
Airline Employees	1	0	0	0
C.U.T.E.	0	0	0	29
Merchant Service	0	0	0	1
Railway Carmen	0	0	0	1
Railway Clerks	2	0	0	1
Shipyards Workers	3	0	1	5
Teamsters	55	11	14	20
Transit Union (ATU)	0	0	1	5
Transit Union (ICTU)	0	0	1	1
Transport & General Workers	19	0	4	1
Western Transportation Union	0	0	1	1
Association of Professional Security Personnel	0	1	0	1
Service Employees	20	2	6	21
Service, Office, Retail Workers	2	0	4	2
Theatrical Stage Employees et al	2	0	1	0

cont'd.

TABLE 16 CONT'D.

APPLICATIONS FILED IN 1982 ANALYZED BY UNION

UNION NAME (Names have been abbreviated. Where possible, the commonly used, shortened form appears.)	CERTIFI- CATION APPLICA- TIONS FILED BY	DECERTI- FICATION APPLICA- TIONS FILED AGAINST	UNFAIR LABOUR PRACTICE COMPLAINTS FILED BY	APPOINTMENT OF AN OFFICER APPLICA- TIONS FILED BY
Fire Fighters	1	0	0	4
Police Officers	0	0	0	5
CHAW	46	0	6	0
Hospitality Workers	72	0	0	0
Hotel Employees	24	15	27	126
Health Sciences Association	2	0	0	2
Hospital Employees Union	12	2	10	3
Nurses	8	0	3	0
Psychiatric Nurses	1	0	0	0
Residents & Interns	3	0	0	0
Garment Workers	0	0	0	2
Marble Polishers	2	0	0	0
Graphic Arts	1	1	3	1
Newspaper Guild	0	0	0	1
Printing and Graphic Communication	2	0	2	0
Typographical Union	2	1	1	0
Auto Workers	1	0	1	0
CAINAW	5	0	11	8
CASAW	1	0	0	0
Collision and Refinishing Technicians	7	0	0	0
Energy & Chemical Workers	2	0	0	2
Mine Workers	1	0	1	2
Steelworkers	12	1	4	66
Food & Commercial Workers	20	5	5	40
Retail Clerks	3	3	8	4
Retail, Wholesale Employees	3	2	2	0
Brewery Workers	0	0	2	1
Can. Farmworkers Union	0	0	5	0
Food & Service Workers	4	1	5	0
Fruit & Vegetable Workers	0	0	1	0
General Farm & Allied Workers	0	0	3	0

cont'd.

TABLE 16 CONT'D.

APPLICATIONS FILED IN 1982 ANALYZED BY UNION

UNION NAME (Names have been abbreviated. Where possible, the commonly-used, shortened form appears.)	CERTIFICATION APPLICATIONS FILED BY	DECERTIFICATION APPLICATIONS FILED AGAINST	UNFAIR LABOUR PRACTICE COMPLAINTS FILED BY	APPOINTMENT OF AN OFFICER APPLICATIONS FILED BY
Shoreworkers	0	0	1	0
United Fishermen	3	0	0	0
C.U.P.E.	15	0	12	40
O.T.E.U.	6	3	3	11
Union of Bank Employees	1	0	3	0
B.C.G.E.U.	2	4	1	2
Vancouver Municipal & Regional Employees Union	6	0	1	3
A.U.C.E.	1	0	1	4
Faculty Association	0	0	2	14
Single Employer Independent Union	8	0	2	1
Employee(s)	0	0	123 ^{*3}	0
Employer(s)	0	0	11 ^{*4}	42
Employer Association (no specific employer)	0	0	0	1
TOTAL APPLICATIONS FILED	942 ^{*1}	73 ^{*2}	343 ^{*5}	714 ^{*6}

*1 One application was filed jointly by the Nurses and Psychiatric Nurses.

*2 Four applications were filed by unions.

*3 Includes 119 applications filed by employees against their unions.

*4 Includes one application filed by a group of employers against their association.

*5 One application was filed jointly by the Retail Clerks and the Food and Commercial Workers.

*6 One application was filed jointly by the Teamsters and an accredited employers' association.